

# ENVIRONMENTAL ADVOCATES

ATTORNEYS AT LAW

5135 Anza Street, San Francisco, California, 94121

Christopher Sproul, Esq.  
Jodene Isaacs, Esq.

Telephone: (510) 847-3467  
Facsimile: (415) 358-5695  
Email: [jisaacs@enviroadvocates.com](mailto:jisaacs@enviroadvocates.com)

June 2, 2017

Via U.S. Mail

Citizen Suit Coordinator  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Room 2615  
Washington, D.C. 20530

Alexis Strauss  
Acting Regional Administrator  
U.S. EPA - Region 9  
75 Hawthorne Street  
San Francisco, California 94105

Scott Pruitt  
Administrator U.S. E.P.A  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Mailcode 4101M  
Washington, D.C. 20460

JUN 06 2017

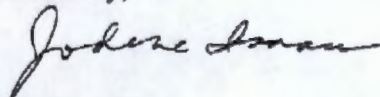
*Re: Ecological Rights Foundation v. Schmidbauer Lumber, Inc. (Case No. 16-cv-7401-HSG)*

Dear Madams and Sir:

Enclosed for your review, please find a copy of a Consent Decree in the above-referenced action. The third party recipient of mitigation funds resulting from agreement will send a letter directly to the Department of Justice stating that it: (1) has read the Consent Decree; (2) will disperse the mitigation funds consistent with the terms of the Consent Decree and (3) will report to the Department of Justice as to the manner in which the funds were disbursed. The purpose of this letter is to provide assurance to you that the mitigation funds are spent in a manner consistent with the purposes of the Clean Water Act.

If you have any questions or comments concerning the terms of the agreement, please feel free to contact me at the above number.

Sincerely,



Jodene Isaacs

1 Christopher Sproul (State Bar No. 126398)  
Jodene Isaacs (State Bar No. 226895)  
2 ENVIRONMENTAL ADVOCATES  
5135 Anza Street  
3 San Francisco, California 94121  
Telephone: (415) 533-3376, (510) 847-3467  
4 Facsimile: (415) 358-5695  
Email: csproul@enviroadvocates.com  
5 Email: jisaacs@enviroadvocates.com

6 Fredric Evenson (State Bar No. 198059)  
ECOLOGY LAW CENTER  
7 P.O. Box 1000  
Santa Cruz, CA 95061  
8 Telephone: (831) 454-8216  
Email: evenson@ecologylaw.com

9 Attorneys for Plaintiff  
10 ECOLOGICAL RIGHTS FOUNDATION

11  
12 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

13 ECOLOGICAL RIGHTS FOUNDATION,  
14  
15 Plaintiff,  
16 v.

17 SCHMIDBAUER LUMBER, INC. and  
SCHMIDBAUER BUILDING SUPPLY,  
18 Defendant.

Civil Case No. 16-cv-07401-HSG

[PROPOSED] CONSENT DECREE

(Federal Water Pollution Control  
Act, 33 U.S.C. §§ 1251 et. seq.)

1  
2       **WHEREAS**, Plaintiff Ecological Rights Foundation ("ERF") is a non-profit public  
3 benefit corporation dedicated to the preservation, protection, and restoration of the  
4 environment, the wildlife and the natural resources of all waters of California, including  
5 Humboldt Bay;

6       **WHEREAS**, Plaintiff alleges that Defendants Schmidbauer Lumber, Inc. is owner and  
7 operator of the lumber mill facility located at 1099 West Waterfront Drive, Eureka, California  
8 (hereinafter "the Facility") or have caused pollutants to be discharged to waters of the United  
9 States from the Facility;

10       **WHEREAS**, Plaintiff alleges storm water flows off-site from the Facility at five  
11 different discharge points or outfalls; each outfall discharges into the City of Eureka's  
12 Municipal Separate Storm Sewer System ("MS4") which discharges to Humboldt Bay;

13       **WHEREAS**, discharges from the Facility are regulated by the National Pollutant  
14 Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water  
15 Resources Control Board] ("Storm Water Permit")<sup>1</sup> and the Federal Water Pollution Control  
16 Act, 33 U.S.C. §§ 1251 *et seq.* ("Clean Water Act" or "CWA");

17       **WHEREAS**, on October 10, 2016, ERF provided notice of violations of the CWA by  
18 Schmidbauer Lumber, Inc. and Schmidbauer Building Supply, LLC and of ERF's intention to  
19 file suit against these entities (collectively "Defendants" or "Schmidbauer.") Notice was  
20 provided to the Administrator of the United States Environmental Protection Agency ("EPA");  
21 the Regional Administrator of EPA Region IX; the Executive Director of the California State  
22 Water Resources Control Board ("State Board"); the Executive Officer of the California  
23 Regional Water Quality Control Board, Region IX ("Regional Board"); the U.S. Attorney  
24 General, and the Defendants ("Notice Letter") as required by the CWA, 33 U.S.C. §  
25 1365(b)(1)(A);

26  
27 <sup>1</sup> The Storm Water Permit was adopted by the State Board through Order No. 2014-0057-DWQ which went into  
28 effect July 1, 2015. Industrial storm water discharges that occurred prior to that date were subject to Order No. 97-  
03-DWQ.



1       **WHEREAS**, on December 30, 2016, Plaintiff filed a complaint against Schmidbauer  
2 Lumber, Inc. and Schmidbauer Building Supply, LLC, in the United States District Court,  
3 Northern District of California (Case No. 16-07401-NJV) alleging ongoing violations of the  
4 CWA (hereinafter "Complaint");

5       **WHEREAS**, Schmidbauer denies all allegations in the Notice Letter and Complaint,  
6 and maintain that the operations at the Facility are in compliance with the requirements of the  
7 CWA and the Storm Water Permit;

8       **WHEREAS**, this Consent Decree shall be submitted to the EPA and United States  
9 Department of Justice ("DOJ") for the statutory review period pursuant to 33 U.S.C. §1365(c)  
10 and 40 C.F.R. § 135.5;

11       **WHEREAS**, Plaintiff and Defendants that it is in the Parties' mutual interest to enter  
12 into a Consent Decree setting forth terms and conditions appropriate to resolving the  
13 allegations set forth in the Complaint without further proceedings and without any admission  
14 of liability on the part of the Defendants;

15       **WHEREAS**, all actions taken by Defendants pursuant to this Consent Decree shall be  
16 made in compliance with all applicable Federal and State laws and local rules and regulations;  
17 and

18       **WHEREAS**, Plaintiff agrees that Schmidbauer Building Supply, LLC is not a party to  
19 this Consent Decree and will be dismissed from the complaint.

20 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE PARTIES AND**  
21 **ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

22 **I. GENERAL OBJECTIVES**

23 1. The objectives of this Consent Decree are:

- 24 a. To ensure that Schmidbauer continues to improve storm water quality as necessary to  
25 comply with the Storm Water Permit;
- 26 b. To ensure that Schmidbauer continues to use, implement, and improve ways, means, and  
27 methods to prevent or reduce the discharge of pollutants in storm water runoff from the  
28

1 Facility; and

2 c. To further the goals and objectives of the CWA.

3 2. Unless otherwise expressly defined herein, terms used in this Consent Decree which are  
4 defined in the CWA or in regulations or rules promulgated under the CWA have the meaning  
5 assigned to them in the statutes or regulations or rules. Whenever terms listed below are used  
6 in this Consent Decree, the following definitions apply:

7 "Consent Decree" means this Consent Decree and any attachments or documents  
8 incorporated by reference.

9 "Day" means a calendar day. In computing any period of time under this Consent Decree,  
10 where the last day of such period is a Saturday, Sunday, or Federal or State Holiday, the period  
11 runs until the close of business on the next day that is not a Saturday, Sunday, or Federal or  
12 State Holiday.

13 "Design Storm" means the volume of runoff produced from an 85th percentile 24-hour  
14 storm event, as determined from the National Oceanic and Atmospheric Administration's  
15 Eureka, California rainfall records.

16 "Dry Season" means the five-month period beginning May 1st of any given year and  
17 ending September 30th of the same year.

18 "Effective Date" means the effective date of this Consent Decree, which shall be the last  
19 day for EPA and DOJ to comment on the Consent Decree, i.e., the 45th day following these  
20 agencies' receipt of the Consent Decree, or the date on which these agencies provide notice  
21 that they require no further review, whichever occurs earlier.

22 "Execution Date" means the date on which this Consent Decree is executed by the  
23 Plaintiff and Defendant, i.e., June 1, 2017.

24 "Wet Season" means the seven-month period beginning October 1st of any given year  
25 and ending April 30th of the following year.

## 26 **II. JURISDICTION AND VENUE**

27 3. This Court has jurisdiction over the subject matter of the claims asserted by Plaintiff  
28

1 pursuant to CWA section 505(a), 33 U.S.C. § 1365(a), 28 U.S.C. §§ 1331, 1355, and 1367.

2 Venue is proper in this judicial district pursuant to section CWA §§ 309(b), 505(c), 33 U.S.C.  
3 §§ 1319(b), 1365(c), and 28 U.S.C. §§ 1391(b) and (c). The parties waive any and all  
4 objections that they may have to the Court's jurisdiction to enter and enforce this Consent  
5 Decree.

6 4. The Complaint states claims upon which relief may be granted pursuant to Section 505 of  
7 the Clean Water Act, 33 U.S.C. § 1365.

8 5. Plaintiff has standing to bring this action.

9 **III. EFFECT OF CONSENT DECREE/RELEASE OF CLAIMS**

10 6. Plaintiff does not, by its consent to this Consent Decree, warrant or aver in any manner  
11 that Schmidbauer's compliance with this Consent Decree will constitute or result in  
12 compliance with any federal or state law or regulation.

13 7. This Consent Decree is neither a permit nor a modification of existing permits under any  
14 federal, state, or local law and in no way relieves Schmidbauer of its responsibilities to comply  
15 with all applicable federal, state and local laws and regulations.

16 8. Compliance with this Consent Decree, including all monetary payments due under this  
17 Consent Decree (including but not limited to the payment of any stipulated payments) and the  
18 completion of all storm water quality improvement measures required pursuant to this Consent  
19 Decree resolves Plaintiff's civil claims for the violations alleged against Schmidbauer in this  
20 Action.

21 9. Plaintiff's Release: Upon the Effective Date of this Consent Decree, Plaintiff hereby  
22 releases Schmidbauer, and its partners and its and their officers, directors, employees,  
23 successors and assigns, from all CWA violations alleged in the Complaint up to and including  
24 the Effective Date of this Consent Decree. Except for claims for Schmidbauer's failure to  
25 comply with this Consent Decree, Plaintiff further releases Schmidbauer, and its partners and  
26 its and their officers, directors, employees, successors and assigns, from all claims pertaining to  
27 alleged violations of the CWA that may occur due to discharges of storm water from the  
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1 Facility between the Effective Date and the termination of this Consent Decree.

2 10. Defendant's Release: Upon the Effective Date of this Consent Decree, Schmidbauer and  
3 its general partners hereby release Plaintiff and its officers, directors, employees, members,  
4 attorneys, and each of their successors and assigns, from, and waives all claims which arise  
5 from or pertain to this action, including all claims for fees (including fees of attorneys, experts,  
6 and others), costs, expenses or any other sum incurred or claimed or which could have been  
7 claimed for matters associated with or related to Plaintiff's Notice Letter and Complaint up to  
8 the Effective Date.

9 **IV. APPLICABILITY**

10 11. The provisions of this Consent Decree apply to and bind Plaintiff and Schmidbauer  
11 (collectively, "Parties"), including any successors or assigns. The Parties certify that their  
12 undersigned representatives are fully authorized to enter into this Consent Decree, to execute it  
13 on behalf of the Parties, and to legally bind the Parties to its terms.

14 12. The Parties agree to be bound by this Consent Decree and not to contest its validity in  
15 any subsequent proceeding to implement or enforce its terms. By entering into this Consent  
16 Decree, Schmidbauer does not admit liability for any purpose as to any allegation or matter  
17 arising out of the Action. Nothing in this Consent Decree shall constitute an admission of any  
18 fact or a waiver of any right or defense unless specifically set forth herein.

19 13. No change in ownership or corporate or other legal status of Schmidbauer or any transfer  
20 of Schmidbauer's assets or liabilities shall in any way alter the responsibilities of Schmidbauer  
21 or any of its successors or assigns thereof, under this Consent Decree. In any action to enforce  
22 this Consent Decree, Schmidbauer shall not raise as a defense the failure by any of its agents,  
23 servants, contractors, employees, successors or assigns to take actions necessary to comply  
24 with this Consent Decree, unless such actions were prevented by a force majeure.

25 14. Except as otherwise provided in this Part, the sale or transfer of ownership or operation  
26 of any portion of either Facility does not relieve Schmidbauer of its obligations under this  
27 Consent Decree. Not later than thirty (30) days prior to sale or transfer of ownership or  
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1 operation of any portion of either Facility, Schmidbauer shall give written notice of this  
2 Consent Decree to each purchaser or successor in interest. Schmidbauer also shall give written  
3 notification to Plaintiff, in accordance with Part XII (NOTICES AND SUBMISSIONS), of the  
4 anticipated sale or transfer of ownership or operation of the Facility at least thirty (30) days  
5 prior to the scheduled date of such sale or transfer and may seek from the Court a modification  
6 of this Decree that would transfer responsibility for compliance with some or all of these  
7 provisions to its successor. The Court shall grant such request if the successor is ready, willing  
8 and able to fully implement obligations the successor would assume under this Consent  
9 Decree.

## 10 **V. STORM WATER QUALITY IMPROVEMENT MEASURES**

### 11 **A. Site Mapping**

12 15. Site Mapping: By August 15, 2017, Schmidbauer shall update as necessary the Site Map  
13 for the Facility's SWPPP. The Site Map shall clearly identify the property boundaries, ground  
14 type (e.g., pervious or impervious) on all portions of the Facility; berms, dikes, walls and other  
15 structures controlling the flow of surface water, components of the Facility storm water  
16 conveyance system, including but not limited to storm water pipes, drop inlets, any storm water  
17 storage or treatment infrastructure (as well as the capacity of such infrastructure) and all other  
18 physical structures or items relevant under this Consent Decree. The Site Map shall further  
19 indicate the direction and pattern of storm water flows at and off the Facility.

20 16. Designated Discharge Points: By August 15, 2017, to the extent not already  
21 implemented, Schmidbauer shall identify on the Site Map every location at which storm water  
22 and non-storm water from an industrial area is known to be discharged or which may  
23 potentially be discharged, e.g., driveways ("Designated Discharge Points or Designated  
24 Discharge Locations"). Each Designated Discharge Point or Discharge Location shall be  
25 numbered and clearly labeled on the Site Map.

26 17. Designation of Storage Areas: To the extent not already implemented, the outdoor  
27 storage areas at the Facility where materials used at the Facility are stored ("Material Storage  
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Areas”) shall be designated on the Facility’s Site Map.

18. Pollutant Generating Activities: The Site Map shall describe include all of the information required by the Section X.E.3 of the 2015 Industrial Stormwater Permit. The SWPPP shall further describe industrial activities that generate wood waste, saw dust, particulates or other pollutants that may be deposited within the Facility's boundaries and identify their discharge locations and the characteristics of such wood waste, saw dust, particulate and other pollutants; and a description of the primary areas of the Facility where wood waste, saw dust, particulate and other pollutants would settle.

**B. Storm Water Pollution Control Measures**

19. In addition to maintaining the current BMPs at the Facility, Schmidbauer shall develop and implement the additional BMPs identified below for Areas 1 through Area 7 as identified on Schmidbauer’s June 15, 2015 SWPPP, as well as any other BMPs necessary to comply with the provisions of this Consent Decree and the Storm Water Permit. Specifically, Schmidbauer shall develop and implement BMPs with the goal of preventing and/or reducing the level of pollutants in storm water discharged from the Facility below the Tier Two Levels in Table 1, attached as Exhibit 1 to this Consent Decree, and to use best efforts to reduce the levels of pollutants in storm water discharges below the Tier One Levels in Table 1. An exceedance of a Tier One or Tier Two Level, by itself, shall not be considered a violation of this Consent Decree. The minimum BMPs to be developed and implemented for each process area as designated on the SWPPP Map are set forth below

20. By August 15, 2017, Schmidbauer shall deploy media filter inserts that are designed for reducing pollutants, including metals, in stormwater discharges within Area 1 and Area 3 that shall be replaced at the beginning of each Wet Season (i.e., by October 1) and every two months or as deemed necessary based on monitoring data during the Wet Season that this Consent Decree is in effect.

21. By August 15, 2017, Schmidbauer shall inspect the perimeter of each Facility and implement such measures as are necessary to prevent water from discharging from the Facility

1 perimeter at any location other than Designated Discharge Locations.

2 22. By August 15, 2017, Schmidbauer shall use meteorological data from the National  
3 Oceanic and Atmospheric Administration's Eureka, California Woodley Island weather station  
4 in designing an active treatment system and monitoring rain events

5 23. Schmidbauer shall operate the Facility such that activities that generate wood waste,  
6 saw dust, fine particulate matter, or other materials that can be tracked or entrained in storm  
7 water discharging from the Facility are principally conducted within designated Industrial  
8 Activity Areas shown on the Site Map prepared pursuant to Paragraphs 15 through 18.

9 24. Schmidbauer shall regularly monitor and maintain the storm water conveyance system  
10 and treatment or retention structures at the Facility in a manner that to control and reduce wood  
11 waste, debris and materials not related to the control and treatment of storm water (*e.g.*, wood  
12 pulp, sawdust, metals, and other debris).

13 25. Starting July 15, 2017 and in following years during from June 1 to September 30 of each  
14 year that this Consent Decree is in effect, Schmidbauer shall cover each storm water drop inlet  
15 with a solid material that will prevent wood waste, saw dust and solids from collecting in the  
16 inlet. These covers may be removed prior to the start of any forecasted precipitation with a  
17 likelihood of occurrence of 50% or greater as determined by the NOAA forecast for the Eureka  
18 area available at <http://www.wrh.noaa.gov/eka/>.

19 **C. Site Housekeeping Plan**

20 26. By August 15, 2017, Schmidbauer shall modify the BMPs currently contained in the  
21 Facility's SWPPPs as necessary to ensure that the sweeping and cleaning actions deployed at  
22 the Facility, in conjunction with other appropriate BMPs, are sufficient to reduce the potential  
23 for pollutants to become entrained in storm water flows, to prevent pollutants from being  
24 blown off the Facility, to keep paved areas of the Facility as clean as practicable, and to  
25 prevent pollutants from being tracked off the Facility onto surface streets. Schmidbauer's  
26 sweeping and cleaning BMPs shall be specified in detail in the Facility's Site Housekeeping  
27 Plan and shall specifically include at least the following measures: (a) identification of (i) areas  
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1 where mechanical sweeping (or scraping) is feasible by mechanical sweepers, mechanical  
2 brooms (such as mower style vacuum sweepers), or backhoe equipped with scraper, (ii) areas  
3 where manual sweeping only, as needed, is feasible, and (iii) areas where sweeping is not  
4 feasible (such as unpaved areas, or under piles of materials that are not reasonably movable),  
5 (b) Wet Season and Dry Season schedules for mechanical and manual sweeping of areas  
6 identified as appropriate for daily sweeping, except during periods of rain, (c) Wet Season and  
7 Dry Season schedules for sweeping of the public streets and curbs, where accessible, permitted  
8 and/or necessary to prevent tracking, with a sweeper near the Facility entrances, (d) triggers for  
9 more frequent ad hoc sweeping or cleaning such as visual accumulation of wood waste, saw  
10 dust or debris, (e) a schedule for the annual inspection and comprehensive site cleaning, (f)  
11 sweeping of curbs downstream of the Facility and small berms in driveways as needed based  
12 on observations during Facility inspections to keep materials from lodging in these areas where  
13 they can be picked up by storm water and deposited into area storm drains, and (g)  
14 specification that Schmidbauer will collect and dispose of all wastes generated during Facility  
15 cleaning and sweeping in a manner that complies with all local, state, and federal laws.

16 27. Site Housekeeping Log: Schmidbauer shall keep a log or checklist, as appropriate, of  
17 the sweeping and any other site cleaning activity performed which identifies the employee  
18 and/or contractor who conducted the sweeping or cleaning, the location of the sweeping or  
19 cleaning, and the date of the sweeping or cleaning activities. The form for this log or checklist  
20 shall be adopted by Schmidbauer as part of the Site Housekeeping Plan referred to in the  
21 preceding paragraphs. Schmidbauer shall direct employees and/or contractors to accurately  
22 complete this form for those sweeping and cleaning actions specified in such log in accordance  
23 with the Site Housekeeping Plan. Schmidbauer shall make the sweeping and cleaning log or  
24 checklist available for inspection by Plaintiff at the site inspection authorized herein or  
25 otherwise with five (5) business days advance request by Plaintiff.

26 28. Plaintiff shall have twenty-one (24) days from receipt of the Site Housekeeping Plan,  
27 provided in the modified SWPPP pursuant to Paragraph 64 to propose any changes or  
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1 modification to be added to meet the intended goal of preventing contaminants from being  
2 moved around and offsite from the Facility, reducing pollutants in storm water flows, keeping  
3 all paved areas of the Facility clean and visible, and preventing pollutants from being tracked  
4 off the Facility onto surface streets. Within 14 days of receiving Plaintiff's comments on the  
5 Site Housekeeping Plan, Schmidbauer shall make all requested changes or provide Plaintiffs  
6 with a written explanation if Schmidbauer declines to implement or develop any of Plaintiff's  
7 recommendations.

8 **D. Structural BMPs**

9 29. Updated ERA Level 1 Report: By August 15, 2017, Schmidbauer shall prepare and  
10 provide to Plaintiff its Updated Exceedance Response Action ("ERA") Level 1 Report  
11 ("Updated Plan") for developing BMPs at the Facility capable of providing treatment to all  
12 storm water discharges to a level commensurate with Best Available Technology Economically  
13 Achievable ("BAT") and the Best Conventional Pollutant Control Technology ("BCT").

14 30. The Updated Plan shall include the engineering and design plans necessary for  
15 conversion of the existing drainage swales located in Area 5 and Area 6 into bio-swale as  
16 described in Schmidbauer's Exceedance Response Action ("ERA") Level 1 Report<sup>2</sup> as  
17 determined through an engineering evaluation of site hydrology, lithology, and other relevant  
18 factors.

19 31. The Updated Plan shall also include engineer approved calculations of the design storm  
20 standards for the volume of water generated in Area 5 and Area 6 that are based on historical  
21 rain data from the NOAA weather station in Eureka.

22 32. In addition to the bio-swale improvements, the Updated Plan shall also include BMPs  
23 aimed at reducing woody source materials and other contaminants from contacting storm water  
24 to address the following areas:

- 25 a. Schmidbauer shall develop BMPs for exposure minimization of all wash water that is  
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27 <sup>2</sup> Schmidbauer filed this report with the State Water Resources Control Board on December 30, 2016.  
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1 generated but not covered or fully contained.

2 b. Schmidbauer shall identify all the sources of pollutants, including any \*metals,  
3 throughout the Facility and develop BMPs to minimize stormwater contact with these  
4 sources.

5 c. Schmidbauer shall develop BMPs to address solids from the conveyor belts used in  
6 Area 6.

7 d. Schmidbauer shall develop BMPs to address solids from the debarker and immediate  
8 area surrounding it and address potential storm water pollutants from this area.

9 33. Updated Plan Implementation: Schmidbauer shall implement the Updated Plan, as  
10 revised as, no later than November 1, 2017 unless Schmidbauer provides good cause to  
11 Plaintiff for the delay in construction. Should Schmidbauer adequately demonstrate good cause  
12 for a delay, Schmidbauer shall implement the updated Plan as soon as practicable given any  
13 permitting requirements or constraints. Schmidbauer shall thereafter properly operate and  
14 maintain the BMPs described in the Plan for the life of the Consent Decree. Any disputes as to  
15 the adequacy of good cause for delay shall be resolved pursuant to the Dispute Resolution  
16 provisions of Part XI (DISPUTE RESOLUTION).

17 34. ERA Level 2 Action Plan: The storm water sampling results collected during the 2017-  
18 2018 Wet Season shall be considered during the evaluation of additional BMP improvements.  
19 If discharges contain constituents in discharges from the Facility at levels exceeding the  
20 Numeric Action Levels (NALs) or the triggers discussed below in Paragraph 39 during the  
21 2017-2018 Wet Season, Schmidbauer shall prepare and provide to Plaintiff an Exceedance  
22 Response Action ("ERA") Level 2 Action Plan for the purpose of providing treatment for  
23 storm water discharges to a level commensurate with Best Available Technology Economically  
24 Achievable ("BAT") and the Best Conventional Pollutant Control Technology ("BCT"). The  
25 objective of the ERA Level 2 Action Plan shall be to obtain sufficient storm water storage  
26 and/or treatment capacity so that all storm water potentially containing chemicals/constituents  
27 of concern is effectively treated to reduce pollutants prior to discharge in any storm that does  
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not exceed the Design Storm (*i.e.*, storm water discharges should only bypass the treatment system during storm events that exceed the Design Storm).

35. The ERA Level 2 Action Plan will be submitted by September 1 following the reported year during which the NAL/or trigger exceedance(s) occurred.

36. The ERA Level 2 Action Plan shall include some or all of the following components, or a combination thereof, as determined through an engineering evaluation of site hydrology, lithology and other relevant factors:

a. Installing holding tanks or other forms of storm water storage generated in at least Area 5 and Area 6 to allow for additional water retention and treatment prior to storm water reaching the treatment system.

b. Diverting all storm water from Area 5 design storm that is currently directed to the inlet at SW-2 to instead flow to outfall SW-4.

c. Diverting stormwater from other areas, as applicable, of the Facility to outfall SW-4

d. Designing and installing an active treatment system that is capable of treating stormwater discharges from at least Area 5 and Area 6, and consider treatment of Area 7, to a level commensurate with BAT and BCT.

37. ERA Level 2 Action Plan Review: Plaintiff shall have twenty-nine (29) days upon receipt of Schmidbauer's ERA Level 2 Action Plan, described in Paragraphs Paragraphs 34 through 36, to provide Schmidbauer with comments. Within fifteen (15) days of Schmidbauer's receipt of Plaintiff's comments on the ERA Level 2 Action Plan Plan, Schmidbauer shall accept and incorporate Plaintiff's comments into the Plan, or shall provide Plaintiff with a written explanation if Schmidbauer declines to develop and/or implement any of Plaintiff's recommendations. Any disputes as to the adequacy of the ERA Level 2 Action Plan shall be resolved pursuant to the Dispute Resolution provisions of Part XI (DISPUTE RESOLUTION).

38. ERA Level 2 ERA Plan Implementation: Schmidbauer shall implement the Level 2 ERA Action Plan, as revised, by the end of the 2018-2019 Wet Season (*i.e.*, July 31, 2019) unless Schmidbauer provides good cause to Plaintiff for the delay in construction. Schmidbauer shall

1 implement the Level 2 ERA Action Plan as soon as practicable given any permitting  
2 requirements or constraints Schmidbauer shall thereafter properly operate and maintain the  
3 treatment and/or storm water retention system for the life of the Consent Decree. Any disputes  
4 as to the adequacy of good cause for delay shall be resolved pursuant to the Dispute Resolution  
5 provisions of Part XI (DISPUTE RESOLUTION).

6 **E. Additional Reduction of Pollutants in Discharges**

7 39. ERA Level 1 Evaluation Plan for Table 1 Exceedances: Schmidbauer shall submit an  
8 ERA Level 1 Evaluation for reducing the level of pollutants in storm water discharges from the  
9 Facility in any of the following circumstances:

- 10 a. If the average of all storm water analytical results in a given wet season for individual  
11 pollutant(s) exceeds any of the applicable Annual NALs as set forth in Table 2 of the  
12 Permit;
- 13 b. If any storm water sample contains a single pollutant at a concentration that exceeds an  
14 Instantaneous NAL as set forth in Table 2 of the Permit and is not currently being  
15 addressed by another ERA Plan; or
- 16 c. If any single storm water sample from an individual outfall exceeds the Annual NAL  
17 for COD or the CTR value for Zinc set forth in Table 1 below.

18 In calculating the average of storm water sampling results for a particular pollutant,  
19 Schmidbauer shall average only those results collected from a single outfall (**i.e., all storm  
20 water outfalls will be evaluated separately**). An exceedance of a Tier One or Tier Two level,  
21 by itself, shall not be considered a violation of this Consent Decree, the Storm Water Permit or  
22 the CWA.

23 40. ERA Level 1 Evaluation Plan Requirements: Each ERA Level 1 Evaluation Plan  
24 submitted shall include at a minimum: (1) the identification of the contaminant(s) discharged in  
25 excess of the NALs, (2) an assessment of the source of each contaminant exceedance, (3) the  
26 identification of additional BMPs that will be implemented to reduce pollutant concentrations  
27 in the discharge, and (4) time schedule for implementation of the proposed BMPs. The time  
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1 schedule(s) for implementation shall ensure that all BMPs are implemented as soon as  
2 possible, but in no case later than November 15 (following the wet-weather season with the  
3 exceedance). The following BMPs should generally be evaluated as a means of reducing  
4 pollutant concentrations:

- 5 a. Hydraulic Controls: installation of additional berms or equivalent structural controls (if  
6 necessary to reduce or prevent storm water from flowing into or, other than through the  
7 engineered storm water conveyance system or storm water retention or treatment facilities).
- 8 b. Detention: additional on-site retention or infiltration of storm water to minimize storm  
9 water discharges (overall or from specific areas) or to detain storm water runoff for  
10 sufficient detention time so as to reduce pollutants in the discharge.
- 11 c. Visual "Track Off" To Public Streets: additional BMPs necessary to reduce or prevent  
12 visual "track off" of material from the Facility onto public streets.
- 13 d. Paving Additional Unpaved Areas: to the extent not already implemented by other  
14 sections of this Consent Decree, stabilizing appropriate portions of unpaved portions of the  
15 Facility where significant vehicle traffic occurs.
- 16 e. Treatment Systems: installing or improving treatment systems that would provide more  
17 effective treatment of storm water prior to discharge than currently installed systems, such  
18 as a fixed bed filter system or other improved filter system.
- 19 f. Evaluation of BMPs: replacing, rehabilitating, or eliminating existing BMPs, taking  
20 into account the age of the BMPs involved or employed, the engineering aspect of the  
21 application of various BMPs, and any adverse environmental impact of the BMPs.
- 22 g. Such other additional BMPs as Schmidbauer deems appropriate for evaluation.

23 41. For the ERA Level 1 Evaluation Plan that may be required after the 2017-2018 Wet  
24 Season, Schmidbauer may consider measures discussed in Paragraph 40(a) through 40(f) in the  
25 ERA Level 2 Action Plan.

26 42. ERA Level 1 Evaluation Plan Submittal: In any year that an ERA Evaluation Plan is  
27 required, Schmidbauer shall provide the ERA Evaluation to Plaintiff by October 1 following  
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1 the Wet Season for which exceedance was reported;

2 43. ERA Level 1 Evaluation Plan Review: Plaintiff shall have thirty (30) days upon receipt of  
3 Schmidbauer's Level 1 ERA Evaluation Plan to provide Schmidbauer with comments. Within  
4 thirty (30) days of Schmidbauer's receipt of Plaintiff's comments on the ERA Level 1  
5 Evaluation Plan, Schmidbauer shall incorporate Plaintiff's comments of recommended  
6 additional BMPs into the Plan

7 44. ERA Level 1 Evaluation Plan Implementation: Level 1 ERA Report to be implemented  
8 before the following Wet Season that the exceedance(s) occurred, or shall provide Plaintiff  
9 with a written explanation if Schmidbauer refuses to develop and/or implement any of  
10 Plaintiff's recommended additional BMPs. Disputes regarding the adequacy of a particular  
11 BMP shall not impact the schedule for implementing any other BMP set forth in the ERA  
12 Level 1 Evaluation Plan. Any disputes as to the adequacy of the ERA Level 1 Evaluation Plan  
13 shall be resolved pursuant to the Dispute Resolution provisions of Part XI.

## 14 **VI. SAMPLING, MONITORING, INSPECTION & REPORTING**

### 15 **A. Sampling Program**

16 45. Schmidbauer shall collect storm water discharge samples from each Discharge Point at  
17 the Facility according to the following sampling schedule:

18 a. During the first, second, and third year of this Consent Decree, and except as set forth  
19 below in this paragraph, Schmidbauer shall collect four storm water samples per year from  
20 each Discharge Point at the Facility. If four consecutive samples from each of the  
21 Discharge Points result in pollutant levels below the NALs set forth in Table 2 of the  
22 Permit for any parameter sampled, Schmidbauer need not conduct additional sampling for  
23 such parameter unless otherwise required by the Storm Water Permit.

24 b. Schmidbauer shall analyze each storm water sample collected for each of the  
25 parameters listed on the Table 1. Should operations change at the Facility, Schmidbauer  
26 shall conduct sampling for any additional toxic priority pollutants listed in 40 C.F.R. §  
27 131.38 likely to be present in Schmidbauer's storm water discharges as a result of the  
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1 changed operations.

2 c. Where Schmidbauer discharges storm water into a storm drain inlet or catch basin,  
3 Schmidbauer may choose to collect a sample below any insert or treatment system. If  
4 Schmidbauer chooses not to collect a post-filtration or post-treatment sample, the quality of  
5 storm water samples entering a storm drain inlet or catch basin containing a fabric insert  
6 shall be considered the same as a sample collected below the insert.

7 46. Qualifying sampling events shall be preceded by at least 48 hours without storm water  
8 discharges.

9 47. If Schmidbauer does not collect the required number of samples from the designated  
10 sampling locations due to lack of discharge, Schmidbauer shall explain in its Annual Report or  
11 any ERA Action Plan required by this Consent Decree that rainfall was insufficient for  
12 collection of samples.

13 48. Schmidbauer shall deliver all storm water samples collected pursuant to this Decree to a  
14 California state certified environmental laboratory for analysis within the time needed for  
15 analysis within laboratory method allowable hold times. Schmidbauer shall direct the  
16 laboratory to conduct analysis sufficient to detect individual constituents at or below the Tier  
17 One and Tier Two Levels set forth in the attached Table 1.

18 49. Schmidbauer shall provide to Plaintiff complete results from Schmidbauer's sampling and  
19 analysis of storm water discharges to Plaintiff within fourteen (14) days of receipt of the  
20 laboratory report from each sampling event. Each time Schmidbauer receives sampling results,  
21 Schmidbauer shall provide Plaintiff with a chart in digital or hardcopy form that summarizes  
22 the results of all the samples and includes the Tier One and Tier Two values for comparison.  
23 The summary chart shall consistently present the sample summaries in milligrams per liter for  
24 all of the parameters for which concentration values are provided.

25 **B. Visual Observations**

26 50. Wet Weather Visual Observation:: During the term of this Consent Decree, Schmidbauer  
27 shall conduct visual observations, during normal operating hours, at the point at which each  
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1 discharge crosses the property line, during one rain event per month that produce a discharge.  
2 During these rain events, Schmidbauer shall also observe all potential discharge locations on  
3 the perimeter of the Facility to determine if discharge of storm water is occurring from an area  
4 of industrial activity.

5 51. During such wet weather visual observations, appropriately trained Schmidbauer  
6 employees shall monitor for the presence of visually observable oil sheens in storm water  
7 discharges and/or discolored or turbid storm water discharges.

8 52. Dry Weather Visual Observations: In accordance with the current SWPPPs, appropriately  
9 trained Schmidbauer employees shall conduct weekly visual BMP inspections of the Facility,  
10 including during dry weather. Such inspections shall include driveways, outdoor storage areas,  
11 and all Industrial Activity Areas. All Designated Discharge Locations shall also be inspected  
12 for accumulation of dust, sediment, sand, grit, oily substances, oily sheens upon any standing  
13 water, and other materials associated with operations at the Facility. Such inspections shall  
14 further include observations of all storm water BMPs at the Facility to ensure that operational  
15 BMPs are being implemented, structural BMPs are in good condition or working order, and  
16 that BMPs have been effective in producing clean conditions at the Facility to the extent  
17 practicable (e.g., an absence of significant oil stains on paved or unpaved surfaces, absence of  
18 metal debris or other debris on paved or unpaved surfaces, absence of oil, or metal or other  
19 debris or grit in storm water conveyance structures).

### 20 **C. Compliance Monitoring**

21 53. Site Inspections: Plaintiff and its representatives may conduct one site inspection per year  
22 at the Schmidbauer Facility during the life of this Consent Decree. The site inspections shall  
23 occur during normal business hours and Plaintiff shall provide Schmidbauer with 5-days  
24 notice. Where Plaintiff is unable to provide 5-days notice due to the unexpected nature of a  
25 storm event, Plaintiff shall provide Schmidbauer with as much advance notice as is possible  
26 but in no event less than forty-eight (48) hours notice.

27 54. During the site inspections, Plaintiff and/or its representatives shall be allowed access to  
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1 the Facility's SWPPP, MIP, and other monitoring records, reports, and sampling data for the  
2 Schmidbauer Facility. During the site inspections, Plaintiff and/or its representatives may  
3 collect samples of discharges from the Facility. A certified California laboratory shall analyze  
4 storm water samples collected by Plaintiff and copies of the lab reports shall be provided to  
5 Schmidbauer within five (5) business days of receipt. At the request of Schmidbauer, the  
6 samples shall be split and one half provided to Schmidbauer so as to allow Schmidbauer to  
7 have their own certified California laboratory analyze the samples, in which case Schmidbauer  
8 shall provide the laboratory results to Plaintiff within fourteen (14) business days of receipt.

9 **D. Cleaning, Maintenance, and Inspection Logs**

10 55. During the life of this Consent Decree, Schmidbauer shall keep contemporaneous  
11 logs documenting the performance of cleaning, maintenance, and inspection activities  
12 performed pursuant to the Facility's SWPPP. The logs shall indicate the personnel who  
13 completed the cleaning, maintenance, or inspection activity and the date the activity was  
14 performed.). The logs shall be made available to Plaintiff at the time of any site inspection.

15 **E. Reporting**

16 56. During the life of this Consent Decree, Schmidbauer shall provide Plaintiff with a copy  
17 of all documents pertaining to the General Permit submitted to or received from the Regional  
18 Board or the State Board concerning the Facility, including all documents and reports  
19 submitted to the Regional Board as required by the General Permit. Schmidbauer shall also  
20 provide Plaintiff with a copy all documents relating to building permits or other approvals  
21 needed by the City of Eureka or other government entities that are required for Schmidbauer to  
22 implement any structural BMPs described Updated Plan, ERA Level 2 Action Plan, and any  
23 future ERA Level 1 Evaluation Plans required by this Consent Decree. Documents and reports  
24 sent by Schmidbauer to the Regional Board, State Board, or other local or state agencies  
25 related to structural BMPs shall be electronically mailed to Plaintiff contemporaneously with  
26 submission to the respective agency. Documents received by Schmidbauer from the Regional  
27 Board, State Board, and/or local or other state agencies shall be electronically mailed to  
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1 Plaintiff within three (3) business days of receipt.

2 57. Schmidbauer shall provide Plaintiff with a copy of its Annual Report on July 15 each  
3 year documenting measures taken by Schmidbauer to comply with the Decree and providing  
4 Plaintiff with summary tables of all storm water sample test results for the Facility, field notes  
5 documenting visual inspections at the Facility, and cleaning, maintenance, and inspection logs  
6 prepared pursuant to paragraph 55. Schmidbauer shall also provide Plaintiff with the monthly  
7 climate summaries from the NOAA site.

8 58. Schmidbauer shall contact Plaintiff to request an extension of the deadline, if necessary,  
9 to implement any structural BMPs requiring agency approval. Plaintiff's consent to  
10 Schmidbauer's requested extension shall not be unreasonably withheld.

11 59. When any Updated Plan, ERA Level 2 Action Plan, or Level 1 ERA Evaluation  
12 ("collectively Action Plans") is completed and approved by Plaintiff or finalized pursuant to  
13 Dispute Resolution, Schmidbauer shall revise its SWPPP and Monitoring Implementation Plan  
14 ("MIP") as applicable within thirty (30) days to reflect the changes required by the Action  
15 Plans. Schmidbauer shall notify Plaintiff in writing when the Action Plans have been  
16 completely implemented, which shall be no later than (2) months after the approval by Plaintiff  
17 or dispute resolution finalizing the Action Plans. Defendant shall implement any Action Plan  
18 approved pursuant to this paragraph as a requirement of the Consent Decree.

## 19 **VII. EMPLOYEE TRAINING**

20 60. By August 15, 2017, Schmidbauer shall modify as necessary and implement a training  
21 program, including any training materials needed for effective implementation of the training  
22 program, to ensure (1) that there are a sufficient number of employees delegated to achieve  
23 compliance with the Storm Water Permit and this Consent Decree, and (2) that these  
24 employees are properly trained to perform the required compliance activities ("Training  
25 Program"). At a minimum the Training Program shall familiarize all employees at the Facility  
26 with the requirements of the Storm Water Permit and this Consent Decree.

27 61. To the extent necessary, the Training Program shall be revised to require specific training  
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1 on the following topics for all personnel whose jobs include some aspect of responsibility for  
2 stormwater compliance:

3 a. Non-Storm Water Discharge Training: Schmidbauer shall train all employees on the  
4 Storm Water Permit's prohibition of non-storm water discharges, so that employees know  
5 what non-storm water discharges are, which can result from improper draining of  
6 automobile fluids, and how to detect them and prevent them;

7 b. BMP Training: Schmidbauer shall train designated employees on BMP implementation  
8 and maintenance to ensure that BMPs are implemented effectively to prevent the exposure  
9 of pollutants to storm water, to prevent the discharge of contaminated storm water, and to  
10 ensure the proper treatment of storm water at the Facility;

11 c. Sampling Training: Schmidbauer shall designate adequate number of employees  
12 necessary to collect storm water samples from each discharge location as required by this  
13 Consent Decree and/or the Storm Water Permit. The training shall include the proper  
14 sampling protocols, including chain of custody requirements, to ensure storm water  
15 samples are properly collected, stored, and submitted to a certified laboratory;

16 d. Visual Observation Training: Schmidbauer shall provide training to all individuals  
17 performing visual observations at the Facility pursuant to this Consent Decree and/or the  
18 Storm Water Permit.

19 62. Training shall be provided on an annual basis, or as otherwise required to ensure  
20 compliance with the terms of this Consent Decree, by a private consultant or a representative  
21 of Schmidbauer who is familiar with the requirements of this Consent Decree and the Storm  
22 Water Permit. The training shall be repeated as necessary to ensure that covered employees are  
23 familiar with the requirements of this Consent Decree, the Storm Water Permit, and the  
24 Facility's SWPPP and MIP. All new personnel shall receive this training before assuming  
25 responsibilities for implementing the SWPPP and/or MIP.

26 63. Schmidbauer shall maintain training records to document compliance with this section,  
27 and shall provide Plaintiff with a copy of these records within fourteen (14) days of receipt of a  
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1 written request. The Training Program shall be specified in the SWPPP.

2 **VIII. STORM WATER POLLUTION PREVENTION AND MONITORING**  
3 **IMPLEMENTATION PLAN**

4 64. By August 15, 2017, Schmidbauer shall revise its SWPPP and its MIP to:

- 5 a. Incorporate the requirements of the Storm Water Permit, and this Consent Decree,  
6 including but not limited to revisions to the SWPPP to specify performance of the measures  
7 referred to in PART V (STORM WATER QUALITY IMPROVEMENT MEASURES)  
8 subparts A through E.;
- 9 b. Identify the positions responsible for compliance with each aspect of the Storm Water  
10 Permit and this Consent Decree;
- 11 c. Describe all BMPs and how they will be operated and/or maintained;
- 12 d. Denote all actions taken to control the deposition of wood waste saw dust, particulate  
13 matter and other pollutants at the Facility;
- 14 e. Describe where and when storm samples are to be collected and include a checklist that  
15 must be used by trained Facility personnel when conducting the storm water sampling  
16 required under the Storm Water Permit and/or under this Consent Decree;
- 17 f. Describe where and when visual inspections of the Facility are to be performed and  
18 include a visual inspection checklist that must be used by trained Facility personnel when  
19 conducting the visual observations required under the Storm Water Permit and/or under  
20 this Consent Decree; and
- 21 g. Describe the type vehicle traffic at the Facility.

22 65. Commenting on the SWPPP and MIP Revisions: Schmidbauer shall submit the revised  
23 SWPPP and MIP to Plaintiff for review and comment as soon as it is completed but in any  
24 event no later than the date specified herein. Plaintiff shall provide comments, if any, to  
25 Schmidbauer within twenty-four (24) days of receipt of the SWPPP and MIP. Schmidbauer  
26 shall incorporate Plaintiff's comments into the SWPPP and MIP or shall justify in writing why  
27 any comment is not incorporated within fourteen (14) days of receiving Plaintiff's comments.  
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1 66. Additional Revisions to SWPPP and MIP: Schmidbauer shall revise the SWPPP and MIP  
2 if there are any changes in the Facility's operations, including but not limited to changes to  
3 storm water discharge point(s) or changes or additions to the BMPs at the Facility resulting  
4 from any ERA 'Action Plan' that may be required under this Consent Decree. Schmidbauer  
5 shall submit any revised SWPPP and MIP to Plaintiff for review and comment within five (5)  
6 days of completion. Plaintiff shall provide comments, if any, to Schmidbauer within thirty (30)  
7 days of receipt of any revised SWPPP and MIP. Schmidbauer shall incorporate Plaintiff's  
8 comments into any revised SWPPP and MIP, or shall justify in writing why any comment is  
9 not incorporated within thirty (30) days of receiving comments.

10 **IX. MITIGATION, FEES, AND COSTS**

11 67. Supplemental Environmental Project (SEP) Funding: As mitigation of the violations  
12 alleged in Plaintiff's Notice and Complaint, Schmidbauer shall pay the sum of \$25,000 to the  
13 Rose Foundation for Communities and the Environment ("Rose Foundation"). The SEP funds  
14 shall be spent exclusively on projects designed to advance environmental restoration (including  
15 environmental restoration work) whose purpose is the improvement water quality in Humboldt  
16 Bay). Within 30 days of the Effective Date, Schmidbauer shall tender this payment to the Rose  
17 Foundation for Communities and the Environment. The Rose Foundation shall provide the  
18 parties identified in Paragraph 77 below a report that sets forth the organizations receiving  
19 funds, a description of the project and its goals, and further itemizing the amounts provided to  
20 each organization.

21 68. Reimbursement of Fees and Costs: Schmidbauer shall reimburse Plaintiff in the amount  
22 of \$73,000 to help defray Plaintiff's investigation fees and costs, expert fees and costs,  
23 reasonable attorneys' fees, and all other costs incurred as a result of investigating the activities  
24 at the Facility, bringing these matters to Schmidbauer's attention, and negotiating a resolution  
25 of this action in the public interest. Such payment shall be made within fifteen (15) days of the  
26 Effective Date.

27 69. Compliance Monitoring Funds: Schmidbauer shall reimburse ERF six thousand dollars  
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1 (\$6,000) per year for each of the years the Consent Decree is in effect for costs and fees  
2 associated with monitoring Schmidbauer's compliance with this Consent Decree. Monitoring  
3 activities include the authorized site inspection, review of water quality sampling reports,  
4 review of Action Plans and other documents submitted pursuant to this Decree, discussion or  
5 written communication with representatives of Schmidbauer concerning potential changes to  
6 compliance requirements, water quality sampling, informal dispute resolution, and other  
7 actions necessary to monitor and ensure Schmidbauer's compliance with this Decree. The  
8 compliance monitoring fund payment shall be made payable to Environmental Advocates  
9 Attorney Client Trust Account. The first installment shall be paid within fifteen (15) days of  
10 the Effective Date, and the remaining installments shall be paid on October 1st for each of the  
11 following years that the Consent Decree is in effect.

## 12 **X. STIPULATED PAYMENTS**

13 70. In the event Schmidbauer fails to submit to Plaintiff any document, report or other  
14 communication required under Paragraphs 29 (Updated Plan), 35 (Level 2 ERA Action Plan),  
15 42 (ERA Level 1 Evaluation), 49 (stormwater sample results), 56 (communications with  
16 agencies), 57 (Annual Report), 59 (Plan implementation), 64 (initial SWPPP update), 66 (any  
17 future SWPPP updates) of this Agreement, for any report more than five (5) days late,  
18 Schmidbauer shall pay a late payment of Five Hundred Dollars (\$500) per day commencing on  
19 the sixth (6<sup>th</sup>) day after the report due date and to accrue per day until the document, report, or  
20 communication is provided.

21 71. In the event Schmidbauer fails to complete a measure of specific performance required  
22 by (a) the dates specified in Paragraphs 69 above, (b) the dates for implementation specified in  
23 the Updated Plan or ERA Level 2 Action Plan, or (c) the dates for implementation of BMPs  
24 specified in any future Level 1 ERA Evaluation Plans, Schmidbauer shall incur a late payment  
25 of Five Hundred Dollar (\$500) per day commencing on the sixth (6th) day after the date by  
26 which the measure was to be completed or implemented to accrue per day until the measure is  
27 performed.

1 72. If Schmidbauer fails to submit to any payments required under Paragraphs 67 through 71  
2 of this Consent Decree within five days of the date due, Schmidbauer shall incur a Five  
3 Hundred Dollar (\$500) per day late payment commencing on the sixth (6<sup>th</sup>) day after the  
4 payment due date to accrue until the stipulated payment is made.

5 73. Beginning in the 2019-2020 Wet Season, Schmidbauer shall pay stipulated payments of  
6 \$500 for each pollutant parameter that exceeds Tier Two levels in any sample taken from any  
7 discrete discharge point (except for zinc as noted in Table 1). Any storm water samples that  
8 Schmidbauer takes internally within the Facility (i.e., of storm water that has not left the  
9 Facility's premise) for the purpose of identifying site specific areas of pollutant generation as  
10 part of designing remedial measures for the Facility shall not be subject to the payment  
11 requirement of this paragraph.

12 74. Any stipulated payments are pursuant to this Part shall be paid to the Rose Foundation for  
13 Communities and the Environment within forty-five (45) days of the event that precipitated the  
14 Stipulated Payment liability. Stipulated payments shall be used for projects designed to  
15 improve water quality in Humboldt Bay. Schmidbauer shall send Plaintiff notice of any such  
16 stipulated payments within seven (7) days of tendering such payments. The Rose Foundation  
17 shall provide the parties identified in Paragraph 77 below a report that sets forth the  
18 organizations receiving funds, a description of the project and its goals, and further itemizing  
19 the amounts provided to each organization.

## 20 **XI. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT DECREE**

21 75. Dispute Resolution Process: If a dispute under this Consent Decree arises, or either Party  
22 believes that a breach of this Consent Decree has occurred, the Parties shall schedule a meet  
23 and confer within ten (10) calendar days of receiving written notification from the other Party  
24 of a request for a meeting to determine whether a violation has occurred and to develop a  
25 mutually agreed upon plan, including implementation dates, to resolve the violation. If the  
26 Parties meet and confer does not resolve the issue, the Parties will seek the services of a  
27 mutually acceptable mediator with experience in environmental disputes for non-binding  
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1 resolution of the dispute with Defendant to pay the costs of the mediation. If resolution with a  
2 mediator is not acceptable, either Party shall be entitled to all rights and remedies under the  
3 law, including bringing a motion before the District Court of California, Northern District,  
4 which shall retain jurisdiction over the Action for the limited purposes of enforcement of the  
5 terms of this Consent Decree. The Parties agree not to object to an expedited hearing schedule  
6 on any Dispute Resolution motion if one of the Parties requests one.

7 **76. Litigation Costs and Fees:** Litigation costs and fees incurred in conducting meet and  
8 confer or otherwise addressing and/or resolving any dispute, including an alleged breach of this  
9 Consent Decree, shall be awarded in accord with the standard established by Section 505 of the  
10 Clean Water Act, 33 U.S.C. §1365 and case law interpreting that standard.

## 11 **XII. NOTICES AND SUBMISSIONS**

12 **77.** Except as otherwise expressly provided in this Consent Decree, whenever under the  
13 terms of this Consent Decree notice is required to be given or a report or other document is  
14 required to be forwarded by one Party to another, it shall, to the extent feasible be sent to the  
15 following individuals as electronic computer files at the e-mail addresses specified below. If a  
16 given document cannot be e-mailed, it shall be mailed by U.S. Mail to the following addresses.  
17 Any change in the individuals designated by either Party must be made in writing to the other  
18 Parties.

19 As to Plaintiff:

20 Fredric Evenson  
21 ECOLOGY LAW CENTER  
22 P.O. Box 1000  
23 Santa Cruz, CA 95061  
24 Telephone: (831) 454-8216  
25 Email: evenson@ecologylaw.com

26 Jodene Isaacs  
27 Environmental Advocates  
28 5135 Anza Street  
San Francisco, California 94121  
Email: jisaacs@enviroadvocates.com

As to the Defendant:

1 Jan Greben  
2 125 East De La Guerra, Suite 203  
3 Santa Barbara, California, 93105  
4 Email: [jan@grebenlaw.com](mailto:jan@grebenlaw.com)

5 Del Clark, Safety Manager  
6 Schmidbauer Lumber, Inc.  
7 1099 West Waterfront Drive  
8 Eureka, California 95501  
9 Email: [delc@schmidbauerlumber.com](mailto:delc@schmidbauerlumber.com)

### 10 **XIII. PAYMENTS**

11 78. All payments to Plaintiff (other than payments of Supplemental Environmental Project  
12 funding pursuant to Paragraph 67 and Stipulated Payments pursuant to Part X shall be made by  
13 check made payable to Environmental Advocates Attorney Client Trust Account. Payments  
14 shall be sent via certified mail, return receipt requested, to the following address:

15 Environmental Advocates  
16 5135 Anza Street  
17 San Francisco, California 94121

18 79. All Supplement Environmental Project funding pursuant to Paragraph 67 and Stipulated  
19 Payments pursuant to Part X shall be made by check payable to the Rose Foundation for  
20 Communities and the Environment. Such payments shall be sent via certified mail, return  
21 receipt requested, to the following address (with notice to the Plaintiff that such payments have  
22 been sent):

23 Tim Little  
24 Rose Foundation for Communities and the Environment  
25 1970 Broadway, Suite 600  
26 Oakland, California 94612-2218

### 27 **XIV. MISCELLANEOUS PROVISIONS**

28 80. Execution in Counterparts: The Consent Decree may be executed in one or more  
counterparts which, taken together, shall be deemed to constitute one and the same document.

81. Severability: In the event that any of the provisions of this Consent Decree is held by a



1 court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
2 affected.

3 82. Construction: The language in all parts of this Consent Decree, unless otherwise stated,  
4 shall be construed according to its plain and ordinary meaning.

5 83. Integrated Consent Decree: All agreements, covenants, representations and warranties,  
6 express or implied, oral or written, of the Parties concerning the subject matter of this Consent  
7 Decree are contained herein.

8 84. Facsimile Signatures: Signatures of the Parties transmitted by facsimile shall be deemed  
9 binding.

10 85. Force Majeure: No Party shall be considered to be in default in the performance of any of  
11 its obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event  
12 is any act of God, war, fire, earthquake, flood, natural catastrophe, and restraint by court order  
13 or public authority. A Force Majeure event does not include normal inclement weather or  
14 inability to pay. Any Party seeking to rely upon this paragraph shall have the burden of  
15 establishing that it could not reasonably have been expected to avoid, and which by exercise of  
16 due diligence has been unable to overcome, the Force Majeure. The Parties shall exercise due  
17 diligence to resolve and remove any Force Majeure event.

18 86. The parties hereto enter into this Consent Decree, Order and Final Judgment and submit  
19 it to the Court for its approval and entry as a final judgment.

## 20 **XV. EFFECTIVE AND TERMINATION DATES**

21 87. Within three (3) days of the final signature of the Parties, Plaintiff shall submit this  
22 executed Consent Decree to EPA and DOJ for a 45-day review and comment period pursuant  
23 to CWA section 505(c)(3) and 40 C.F.R. § 135.5. The Court shall not enter its judgment on  
24 consent until the expiration of this review and comment period. If EPA or DOJ requests or  
25 suggests revisions to this Consent Decree or objects to entry of this Consent Decree in the form  
26 presented, the Parties shall within ten (10) days meet and confer on whether to revise this  
27 Consent Decree in accord with the requested or suggested revisions provided by EPA or DOJ  
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1 and/or otherwise to accommodate EPA or DOJ's objections. If the Parties do not mutually  
2 agree to any such revisions or modifications, the Parties shall so notify the Court and request  
3 entry of the Consent Decree in the form drafted. If the Court objects to entry of this Consent  
4 Decree in the form presented, the Parties will attempt in good faith to agree to revisions of this  
5 Consent Decree necessary so that it is acceptable to the Court.

6 88. The Effective Date of this Consent Decree shall be the last day for EPA and DOJ to  
7 comment on the Consent Decree, i.e., the 45th day following these agencies' receipt of the  
8 Consent Decree, or the date on which these agencies provide notice that they require no further  
9 review, whichever occurs earlier.

10 89. This Consent Decree shall terminate five (5) years from the Effective Date provided that  
11 Schmidbauer has made all monetary payments owed under the Consent Decree and there is no  
12 pending Dispute Resolution proceeding pursuant to the provisions of Part XI (DISPUTE  
13 RESOLUTION). If Schmidbauer has not made all monetary payments owed under the Consent  
14 Decree or if there is a pending Dispute Resolution proceeding, the Consent Decree shall be  
15 extended until Schmidbauer has made all monetary payments owed under the Consent Decree  
16 and all pending Dispute Resolution proceedings have been resolved.

17 90. Schmidbauer shall initiate termination by submitting certification to Plaintiff that it has  
18 satisfied the conditions of termination set forth in this Part. The Consent Decree shall  
19 automatically terminate thirty (30) days from the Plaintiff's receipt of this notice, unless  
20 Plaintiff provides written notice to Schmidbauer within these thirty (30) days that Plaintiff  
21 objects to the certification. If Plaintiff disagrees with Schmidbauer's certification, then the  
22 matter shall be subject to the Dispute Resolution provisions of Part XI (DISPUTE  
23 RESOLUTION).

24  
25 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as of the date  
26 first set forth above.  
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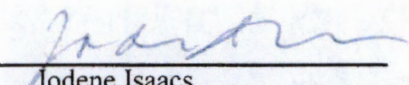
**IT IS SO ORDERED:**

Date: \_\_\_\_\_

Hon. Judge Haywood S. Gilliam, Jr.  
U.S. District Court Judge,  
Northern District of California

APPROVED AS TO FORM:  
ENVIRONMENTAL ADVOCATES

Dated: June 1, 2017

By:   
Jodene Isaacs  
Attorney for Plaintiff

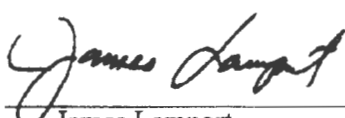
GREBEN AND ASSOCIATES

Dated: \_\_\_\_\_ 2017

By: \_\_\_\_\_  
Jan Greben  
Attorney for Defendant

APPROVED AS TO CONTENT:

Dated: 6 - 1 2017

By:   
James Lamport  
Ecological Rights Foundation

Dated: \_\_\_\_\_ 2017

By: \_\_\_\_\_  
Frank Schmidbauer  
Schmidbauer Lumber, Inc.

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**IT IS SO ORDERED:**

Date: \_\_\_\_\_

Hon. Judge Haywood S. Gilliam, Jr.  
U.S. District Court Judge,  
Northern District of California

**APPROVED AS TO FORM:  
ENVIRONMENTAL ADVOCATES**

Dated: \_\_\_\_\_ 2017

By: \_\_\_\_\_  
Jodene Isaacs  
Attorney for Plaintiff

**GREBEN AND ASSOCIATES**

Dated: 6/1 2017

By: \_\_\_\_\_  
Jan Greben  
Attorney for Defendant

**APPROVED AS TO CONTENT:**

Dated: 6 2017

By: \_\_\_\_\_  
James Lamport  
Ecological Rights Foundation

Dated: 6/01/1 2017

By: \_\_\_\_\_  
Frank Schmidbauer  
Schmidbauer Lumber, Inc.



**Table 1. Tier One and Two Levels for Facility Discharges**

<b>Contaminant</b>	<b>Tier One Limit/Annual NAL</b>	<b>Tier Two Limit/Instantaneous Maximum NAL or CTR value</b>
Oil and grease	15 mg/l	25 mg/L
Total Suspended Solids	100 mg/l	400 mg/L
Chemical Oxygen Demand	120 mg/l	120 mg/L
Total Recoverable Zinc	0.26 mg/l	0.09 mg/L <sup>a</sup>
pH	--	6-9 units

<sup>a</sup>. Schmidbauer will undertake best efforts to address source(s) of zinc that contribute to its presence above the identified CTR value of 0.09 mg/L. However, the occurrence of zinc above the Tier 2 value will not trigger payments as identified in Paragraph 73.

EXHIBIT A TO CONSENT DECREE  
Ecological Rights Foundation v. Schmidbauer Lumber, Inc.

Reference Paragraph in Consent Decree	Description	Due Date
15	Site Mapping	8/15/17
16	Discharge points	8/15/17
20	Deploy media filters	8/15/17
21	Perimeter Inspection	8/15/17
22	NOAA data	8/15/17
25	Cover storm drains	7/15/17
26	Site Housekeeping Plan	8/15/17
28	ERF Review to SLI	9/8/17
26	Updated SWPPP - SLI to ERF	8/15/17
28	ERF (SWPPP) Review to SLI	9/8/17
28	Revised Updated SWPPP	9/22/17
29	Updated ERA Level 1 Report	8/15/17
33	Updated Plan Implementation	11/1/17
35	ERA Level 2 Action Plan	9/1/18
37	ERF Review to SLI	9/30/18
37	Update ERA Level 2 Report	10/15/18
38	Implement Level 2	7/31/19
40	ERA Level 1 ( <i>EVALUATION Plan</i> )- Implement	11/15/18
42	Submit ERA Level 1 Plan	10/1/18
43	ERF Review to SLI	10/31/18
56	All submittals to ERF	Contemporaneous with submittal to agency(s)
56	Received by SLI from agencies	Within 3 business days of receipt by SLI
57	Annual report, w/logs, notes, etc.	July 15th
59	Notification of implementation	2 Months after Approval by ERF
60	Employee training	8/15/17
64	Revised SWPPP/MIP	8/15/17
65	ERF comments to SLI - SWPPP/MIP	9/8/17
65	SLI to incorporate or advise why not	9/22/17
66	Revisions to SWPPP/MIP	5 Days of Changes
66	ERF to SLI - comments on changes	30 Days of Receipt
67	SEP Funding	Within 30 days of Effective Date
68	Fees and costs	Within 15 days of Effective Date
69	Annual oversight fee	Within 15 days of Effective Date and Oct. 1, following years

NOV 15 2017

1 ANDREW L. PACKARD (State Bar No. 168690)  
2 WILLIAM N. CARLON (State Bar No. 305739)  
3 Law Offices of Andrew L. Packard  
4 245 Kentucky Street, Suite B3  
5 Petaluma, CA 94952  
6 Tel: (707) 782-4060  
7 Fax: (707) 782-4062  
8 E-mail: andrew@packardlawoffices.com  
9 wncarlon@packardlawoffices.com

10 REED W. SUPER (State Bar No. 164706)  
11 SUPER LAW GROUP, LLC  
12 180 Maiden Lane, Suite 603  
13 New York, New York 10038  
14 Tel: (212) 242-2355  
15 Fax: (855) 242-7956  
16 reed@superlawgroup.com

17 Attorneys for Plaintiff  
18 CALIFORNIA SPORTFISHING  
19 PROTECTION ALLIANCE

20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA

22 CALIFORNIA SPORTFISHING  
23 PROTECTION ALLIANCE, a non-profit  
24 corporation,

25 Plaintiff,

26 v.

27 THE SHILOH GROUP, LLC AND  
THOMAS NELSON,

Defendants.

Case No. 4:16-cv-06499-DMR

**[PROPOSED] CONSENT AGREEMENT**  
**(Federal Water Pollution Control Act,**  
**33 U.S.C. §§ 1251 to 1387)**

28 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter "CSPA") is a  
29 non-profit public benefit corporation dedicated to the preservation, protection, and defense of the  
30 environment, wildlife, and natural resources of California's waters;

31 **WHEREAS**, Defendants The Shiloh Group, LLC ("TSG") and Thomas Nelson (together  
32 "Defendants") own an approximately 31-acre light industrial facility at 930 Shiloh Road, in Windsor,

1 California where TSG leases lots to approximately 60-80 tenant businesses (collectively, the  
2 "Facility");

3 **WHEREAS**, CSPA and Defendants collectively shall be referred to as the "Parties;"

4 **WHEREAS**, the Facility discharges storm water from the Facility and adjacent property  
5 owned by others into storm water conveyances owned by the City of Windsor, which, in turn,  
6 discharges to Pruitt Creek (a map of the Facility is attached hereto as **Exhibit A** and incorporated  
7 herein by reference);

8 **WHEREAS**, storm water discharges associated with industrial activity are regulated pursuant  
9 to the National Pollutant Discharge Elimination System ("NPDES"), General Permit No. CAS000001,  
10 State Water Resources Control Board ("State Board") Water Quality Order No. 14-57-DWQ, issued  
11 pursuant to Section 402(p) of the Clean Water Act ("Act"), 33 U.S.C. §1342(p), (hereinafter "General  
12 Permit") and, prior to July 1, 2015, were regulated by Water Quality Order No. 91-13-DWQ, as  
13 amended by Water Quality Order 92-12-DWQ and 97-03-DWQ;

14 **WHEREAS**, on or about September 7, 2016, Plaintiff provided its first notice alleging  
15 Defendants' violations of the Act ("Clean Water Act Notice Letter"), and of its intention to file suit  
16 against Defendants to the Administrator of the United States Environmental Protection Agency  
17 ("EPA"); the Administrator of EPA Region IX; the U.S. Attorney General; the Executive Director of  
18 the State Board; the Executive Officer of the Regional Water Quality Control Board, North Coast  
19 Region ("Regional Board"); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (a  
20 true and correct copy of CSPA's first Clean Water Act Notice Letter is attached hereto as **Exhibit B**  
21 and incorporated herein by reference);

22 **WHEREAS**, on or about November 4, 2016, Plaintiff provided notice of its intention to file suit  
23 against Defendants to California Public Enforcement Agencies, Mr. Nelson and Mr. Jared Carter, as  
24 required by California Health & Safety Code § 25249.5 et seq. (commonly referred to as "Proposition  
25 65"). (A true and correct copy of CSPA's Proposition 65 Notice Letter is attached hereto as **Exhibit C**  
26 and incorporated herein by reference);

27 **WHEREAS**, on or about December 9, 2016, Plaintiff provided its second notice alleging  
28



1 Defendants' violation of the Act. A true and correct copy of CSPA's second Clean Water Act Notice  
2 Letter is attached hereto as **Exhibit D** and incorporated by reference;

3 **WHEREAS**, Defendants deny responsibility for any discharges of storm water associated with  
4 industrial activity occurring at the Facility, deny the occurrence of the violations alleged in the Clean  
5 Water Act Notice Letter and maintain that TSG has complied at all times with the provisions of the  
6 General Permit and the Clean Water Act or, alternatively, that there are no "ongoing and continuous"  
7 violations of the General Permit or the Act attributable to Defendants;

8 **WHEREAS**, Defendants represent that they do not currently lease any lots at the Facility to  
9 any tenant who engages in industrial activity within the meaning of the Clean Water Act that does not  
10 also have NEC coverage or a Waiver, as more fully described in Paragraphs 1.2(b) and (c) below;

11 **WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter as to all  
12 entities and persons named in the Clean Water Act Notice Letters without litigation and to enter into  
13 this Consent Agreement ("Consent Agreement" or "Agreement");

14 **WHEREAS**, on or about July 25, 2017, CSPA filed its First Amended Complaint, ECF No.  
15 48, against Defendants in the United States District Court, Northern District of California ("the  
16 Action");

17 **WHEREAS**, for purposes of this Agreement only, the Parties stipulate that venue is proper in  
18 this Court, and that Defendants do not contest the exercise of jurisdiction by this Court to dismiss this  
19 matter with prejudice under the terms of this Agreement;

20 **WHEREAS**, within five (5) calendar days of mutual execution, this Agreement shall be  
21 submitted to the United States Department of Justice for the 45-day statutory review period, pursuant  
22 to 33 U.S.C. § 1365(c);

23 **WHEREAS**, at the time the Agreement is submitted for approval to the United States  
24 Department of Justice, CSPA shall submit a Notice of Settlement in the District Court and inform the  
25 Court of the expected dismissal date following the expiration of the statutory review period identified  
26 above;

27 **AND WHEREAS**, within ten (10) calendar days of expiration of the statutory review period,  
28

1 or the earlier receipt of non-objection from the United States Department of Justice, the Parties shall  
2 file with the Court a Stipulation and Order that shall provide that the Complaint and all claims therein  
3 shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) concurrently  
4 with the District Court's retention of jurisdiction for the enforcement of this Agreement as provided  
5 herein (the date of entry of the Order to dismiss shall be referred to herein as the "Court Approval  
6 Date").

7 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**  
8 **PARTIES AS FOLLOWS:**

9 **I. COMMITMENTS OF TSG**

10 **1. Bi-Annual Notice to CSPA Regarding TSG's Tenants at the Facility.** Based on  
11 TSG's conduct as the owner and landlord of the Facility, TSG shall not be required to enroll in the  
12 Industrial General Storm Water Permit unless required to do so by the Regional Water Quality Control  
13 Board. Instead, TSG shall perform the tasks identified in this Consent Agreement. TSG shall provide  
14 CSPA with a list of all tenants operating businesses at the Facility on January 1 and July 1 throughout  
15 the term of this Agreement. The list of tenants shall provide the following information: (a) name of  
16 tenant; (b) location of leasehold; (c) primary SIC code as provided by the tenant to TSG. The first list  
17 of tenants, provided on or about January 1, 2018, shall be accompanied by an affidavit from Defendants  
18 attesting to the fact that as of January 1, 2018, no then-current tenants at the Facility engage in industrial  
19 activity within the meaning of the Clean Water Act without either valid NEC coverage or a Waiver, as  
20 more fully described in Paragraphs 1.2(b) and (c) below.

21 **2. Implementation of Contractual Storm Water Management Practices.** Unless  
22 otherwise indicated below, on or before January 1, 2018, TSG shall implement the following leasing  
23 practices at the Facility:

24 (a) **No Industrial Tenants.** TSG shall not enter into any new lease with any tenant who  
25 engages in industrial activity within the meaning of the Clean Water Act at the Facility, except in  
26 accordance with the following provisions of this Paragraph 2.

27 (b) **No Exposure Certification.** Notwithstanding subpart (a) above, TSG may enter into a  
28 new lease with a tenant who engages in industrial activity within the meaning of the Clean Water Act

1 at the Facility if the lease requires the tenant, who would otherwise be required to obtain coverage  
2 under the General Permit:

3 i. prior to beginning industrial operations, to provide TSG with a description of its  
4 intended operations that includes an NEC Checklist, as defined in the General Permit,  
5 demonstrating that future operations are designed to comply with the no exposure  
6 conditions set forth in Section XVII of the General Permit;

7 ii. agree, as a condition of tenancy, to maintain a condition of no exposure at all  
8 times or to obtain a Waiver for Conditionally Covered Activities from the Regional  
9 Board as described in subpart (c) below; and

10 iii. upon becoming eligible, to pay all required fees and submit a notice of intent for  
11 no exposure certification ("NEC Coverage") under the General Permit, to receive NEC  
12 Coverage under the General Permit from the Regional Board, to timely submit all  
13 recertification materials required by the General Permit, to maintain compliance with no  
14 exposure conditions at all times, and to provide copies of all correspondence between the  
15 tenant and the Regional Board to TSG within a week of sending or receipt.

16 (c) Waiver for Conditionally Covered Activities. Notwithstanding subpart (a) above, TSG  
17 may enter into a new lease with a tenant who engages in industrial activity within the meaning of the  
18 Clean Water Act at the Facility, if the tenant is engaged in activities described under an SIC code for  
19 which permit coverage is conditional upon choices the tenant makes regarding methods of operation,  
20 and the tenant's activities and methods of operation meet the conditions of 40 C.F.R. 122.26(b)(14) for  
21 operating conditionally without a permit (e.g., tenant operating a trucking fleet under SIC 4212 but not  
22 engaging in any vehicle maintenance, including fueling or washing, at the Facility). To qualify under  
23 this exception, the tenant's lease must require the tenant:

24 i. To submit to the Regional Board Permit Registration Documents ("PRDs"),  
25 pursuant to Section II(B)(1) of the General Permit; and,  
26  
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1           ii. To obtain from the Regional Board a written determination that coverage under  
2           the General Permit is not required because tenant conducts industrial activity within a  
3           conditionally-covered SIC code in a manner that does not require coverage.

4           (d) Documentation of No Exposure Certification or Waiver. TSG shall incorporate into all  
5           new leases provisions that require tenants who are eligible for a No Exposure Certification or a Waiver  
6           to re-certify in writing to TSG, and upload such re-certification to the California Storm Water Multiple  
7           Application and Report Tracking System ("SMARTS"), annually, that the industrial tenant is covered  
8           by a Non-Exposure Certification or Waiver. TSG shall provide copies to CSPA of all correspondence  
9           between TSG and any tenant pertaining to storm water matters that are the subject of Plaintiff's Notices  
10          of Intent to Sue within a week of sending or receipt.

11          (e) Failure of the Regional Board to Approve NEC or Waiver. If the Regional Board  
12          declines to grant NEC Coverage or a Waiver, or if a NEC Coverage or Waiver tenant no longer  
13          complies with the terms of those exemptions (for example, refuses to comply with their lease, fails to  
14          submit certification, has certification withdrawn by the Regional Board after inspection, is found liable  
15          for storm water-related violations of the Clean Water Act in a citizen suit, etc.) TSG will immediately  
16          notify CSPA and will, within ninety (90) days of learning that the tenant no longer meets the terms of  
17          the exemptions above, either apply with the tenant as co-permittees for storm water coverage or  
18          commence eviction proceedings. TSG will inform CSPA of the commencement of eviction  
19          proceedings where those proceeding are the result of this paragraph 2.e and report the progress and  
20          disposition of the eviction proceeding on a quarterly basis. If the proceeding does not conclude with  
21          an eviction, TSG will apply with the tenant as co-permittees for storm water coverage.

22          **3. Implementation of Structural Storm Water Management Practices.** Within sixty  
23          days (60) of the Court Approval Date, TSG shall commence the installation of a series of structural  
24          changes to the storm water conveyance system at the Facility in order to improve the water quality of  
25          the storm water discharges emanating from the Facility.<sup>1</sup> The structural changes will include a series  
26          of linear sediment control BMPs along the concrete conveyance running along the western edge of the

27          <sup>1</sup> As used herein, the term "commence" includes obtaining necessary approvals, if required, from local, state and federal  
28          agencies for the installation of the sediment control BMPs described in this paragraph.

1 Facility and a detention basin, bio-swale or similar structural BMP at the foot of the concrete  
2 conveyance (at its northern end on TSG' property) designed to reduce Total Suspended Solids and  
3 other contaminants of concern associated with Total Suspended Solids. TSG has engaged a licensed  
4 professional engineer to design these structural changes and specify a schedule of maintenance  
5 activities to ensure the proper operation of these structural measures. The construction drawings and  
6 maintenance schedule are attached hereto as **Exhibit E** and incorporated herein. The Parties recognize  
7 that both DTSC and, or, the RWQCB are currently considering issuing directives to Ecodyne and/or,  
8 Flour Corporation which may make the construction of the structural changes described in this  
9 paragraph infeasible. Should it be determined that timely installation of the structural changes  
10 becomes infeasible as a result of the issuance or publication of an intent to issue such an order or  
11 inability to obtain necessary approvals from local state or federal agencies, the Parties will meet and  
12 confer to agree upon alternative measures intended to achieve equal or greater water quality benefits  
13 as would have been achieved by the structural changes described in this paragraph pursuant to  
14 Paragraph 10 of this Consent Agreement. Moreover, in designing the structural changes, should the  
15 licensed professional engineer identify alternative strategies that could result in equal or greater water  
16 quality benefits, the Parties agree to meet and confer to discuss such alternatives.

17 **4. Inspections during the Term of This Agreement.** TSG shall permit representatives  
18 of CSPA to perform up to three (3) physical inspections of the Facility during the term of this  
19 Agreement. These inspections shall be performed by CSPA's counsel and consultants and may  
20 include sampling, photographing, and/or videotaping and CSPA shall promptly provide to TSG a copy  
21 of all sampling reports, photographs and/or video. CSPA shall provide at least four (4) business days  
22 advance notice of such physical inspection, except that TSG shall have the right to deny access if  
23 circumstances would make the inspection unduly burdensome and pose significant interference with  
24 business operations or any party/attorney, or the safety of individuals. In such case, TSG shall specify  
25 at least three (3) dates within the two (2) weeks after CSPA's noticed date upon which a physical  
26 inspection by CSPA may proceed. TSG shall not make any alterations to Facility conditions during  
27 the period between receiving CSPA's initial four (4) business days' advance notice and the start of  
28

1 CSPA's inspection that TSG would not otherwise have made but for receiving notice of CSPA's  
2 request to conduct a physical inspection of the Facility, excepting any actions taken in compliance  
3 with any applicable laws or regulations and excepting any actions that are taken by TSG's tenants.  
4 CSPA's inspection team shall consist of no more than three (3) persons each of whom shall have  
5 executed the liability release attached hereto as **Exhibit F**.

6       **5. Communications To/From Regional and State Water Boards.** During the term of  
7 this Agreement, TSG shall provide CSPA with copies of all documents submitted to the RWQCB or  
8 the State Water Board, or received by TSG from, the Regional Water Board or the State Water Board  
9 concerning storm water discharges from the Facility. Such documents and reports shall be provided to  
10 CSPA pursuant to the Notice provisions set forth below and within one (1) week after TSG's  
11 submission(s) to, or, receipt from, such agencies. During the term of this Agreement, CSPA shall  
12 provide TSG with copies of all documents submitted to the RWQCB or the State Water Board, or  
13 received by CSPA from, the Regional Water Board or the State Water Board related to TSG. Such  
14 documents and reports shall be provided to TSG pursuant to the Notice provisions set forth below and  
15 within one (1) week after CSPA's submission(s) to, or, receipt from, such agencies.

16  
17 **II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

18       **6. Mitigation Payment In Lieu Of Civil Penalties under the Clean Water Act.** As  
19 mitigation to address any potential harms from the Clean Water Act violations alleged in CSPA First  
20 Amended Complaint, TSG agrees to pay the sum of Eighty-Five Thousand Dollars (\$85,000) to the  
21 Rose Foundation for Communities and the Environment for projects to improve water quality on the  
22 Russian River.

23       **7. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,  
24 expert, consultant and attorneys' fees and costs associated with monitoring TSG's compliance with this  
25 Agreement, TSG agree to contribute \$10,000 for each of the two Wet Seasons covered by this  
26 Agreement (\$20,000 total for the life of the Agreement), to a compliance monitoring fund maintained  
27 by counsel for CSPA.

1           **8. Reimbursement of Fees & Costs.** TSG agrees to reimburse CSPA in the amount of  
2 \$220,000 to defray CSPA's reasonable investigative, expert, consultant, and attorneys' fees and costs,  
3 and all other costs incurred as a result of investigating the activities at the Facility, bringing the action,  
4 and negotiating a resolution of this action in the public interest.

5           **9. Installment Payments; Payee; Liquidation on Default.** Payment of the obligations  
6 set forth in Paragraphs 6-8 above (totaling \$325,000) shall be remitted in eight (8) quarterly  
7 installments, by the dates set forth below. All payments shall be made payable to the "Law Offices of  
8 Andrew L. Packard Attorney Client Trust Account" and remitted to Plaintiff's counsel at the address  
9 set forth in the Notice provisions herein.

<u>Remittance Due</u>	<u>Amount</u>
January 1, 2018	\$30,000
April 1, 2018	\$30,000
July 1, 2018	\$30,000
October 1, 2018	\$30,000
January 1, 2019	\$60,000
April 1, 2019	\$60,000
July 1, 2019	\$60,000
October 1, 2019	\$25,000
<b>Total:</b>	<b>\$325,000</b>

20 In the event that any payment owed by Defendants under this Agreement is not remitted to the Law  
21 Offices of Andrew L. Packard on or before the Remittance Due date set forth above, Defendants shall  
22 be deemed to be in default of their obligations under this Agreement. CSPA shall provide email notice  
23 to Defendants of any default. If Defendants fail to remedy the default within five (5) business days of  
24 such notice, then all future payments due hereunder shall become immediately due and payable, with  
25 the prevailing federal funds rate applying to all interest accruing on unpaid balances due hereunder,  
26 beginning on the due date of the funds in default. Payment to the Rose Foundation for Communities  
27 and the Environment will be made by the Law Offices of Andrew Packard from the above payments.



1     **III.     DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT**

2           **10.**       If a dispute under this Agreement arises, or either Party believes that a breach of this  
3 Agreement has occurred, the Parties shall meet and confer in good faith within seven (7) days of  
4 receiving written notification from the other Party of a request for a meeting to determine whether a  
5 breach has occurred and to develop a mutually agreed upon plan, including implementation dates, to  
6 resolve the dispute. If the Parties fail to meet and confer, or the meet-and-confer does not resolve the  
7 issue, after at least seven (7) days have passed after the meet-and-confer occurred or should have  
8 occurred, either Party shall be entitled to all rights and remedies under the law, including filing a  
9 motion with the District Court of California, Northern District, which shall retain jurisdiction over the  
10 Action until the Termination Date for the limited purposes of enforcement of the terms of this  
11 Agreement. The Parties shall be entitled to seek fees and costs incurred in any such motion.

12           **11.       CSPA's Waiver and Release.** Upon the Court Approval Date of this Agreement,  
13 CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns, directors,  
14 officers, agents, attorneys, representatives, and employees, releases Mr. Nelson, Mr. Jared Carter, TSG  
15 and its officers, directors, managers, members, employees, shareholders, parents, subsidiaries, and  
16 affiliates, and each of its predecessors, successors and assigns, and each of their agents, attorneys,  
17 consultants, and other representatives (each a "Released Defendant Party") from, and waives all  
18 claims which arise from or pertain to the Action, including, without limitation, all claims for injunctive  
19 relief, damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and  
20 others), costs, expenses or any other sum incurred or claimed or which could have been claimed in this  
21 Action, for the alleged failure of TSG to comply with the Clean Water Act at the Facility, up to and  
22 including the Court Approval Date of this Agreement.

23           **12.       CSPA's Covenant Not To Sue Regarding Proposition 65 Claims.** CSPA, acting  
24 on its own behalf, and not on behalf of the general public, agrees not to file any claims for relief  
25 against Defendants under Proposition 65 based upon Plaintiff's November 4, 2016 Notice of Intent to  
26 Sue pursuant to California Proposition 65, including, without limitation, all claims for injunctive  
27 relief, damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and  
28

1 others), costs, expenses or any other sum incurred or claimed or which could have been claimed, for  
2 the alleged failure of TSG to comply with California's Proposition 65, up to and including the Court  
3 Approval Date of this Agreement.

4 **13. Defendants' and Jared Carter's Waiver and Release.** Defendants and Jared  
5 Carter, on their own behalf and on behalf of any Released Defendant Party under their control, release  
6 CSPA (and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each  
7 of their successors and assigns, and its agents, attorneys, and other representative) from, and waives all  
8 claims which arise from or pertain to the Action, including all claims for fees (including fees of  
9 attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could  
10 have been claimed for matters associated with or related to the Action.

11 **IV. MISCELLANEOUS PROVISIONS**

12 **14.** The Parties enter into this Agreement for the purpose of avoiding prolonged and  
13 costly litigation. Nothing in this Agreement shall be construed as, and Defendants expressly do not  
14 intend to imply, an admission as to any fact, finding, issue of law, or violation of law, nor shall  
15 compliance with this Agreement constitute or be construed as an admission by Defendants of any fact,  
16 finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or  
17 otherwise affect the obligation, responsibilities, and duties of the Parties under this Agreement.

18 **15.** The Agreement shall be effective upon entry by the Court Approval Date. The  
19 Agreement shall terminate on the "Termination Date," which shall be January 31, 2020.

20 **16.** The Agreement may be executed in one or more counterparts which, taken together,  
21 shall be deemed to constitute one and the same document. An executed copy of this Agreement shall  
22 be valid as an original.

23 **17.** In the event that any one of the provisions of this Agreement is held by a court to be  
24 unenforceable, the validity of the remaining provisions shall not be adversely affected.

25 **18.** The language in all parts of this Agreement, unless otherwise stated, shall be  
26 construed according to its plain and ordinary meaning. This Agreement shall be construed pursuant to  
27 the law of the United States, without regard to choice of law principles.

1           19.       The undersigned are authorized to execute this Agreement on behalf of their  
2       respective Parties and have read, understood and agreed to be bound by all of the terms and conditions  
3       of this Agreement.

4           20.       All agreements, covenants, representations and warranties, express or implied, oral or  
5       written, of the Parties concerning the subject matter of this Agreement are contained herein. This  
6       Agreement and its attachments are made for the sole benefit of the Parties, and no other person or  
7       entity shall have any rights or remedies under or by reason of this Agreement, unless otherwise  
8       expressly provided for therein.

9           21.       No third-party beneficiary will have any rights under this agreement except for the  
10      TSG's related parties as provided for in Paragraph 10 of this Agreement

11           22.       **Force Majeure.**

12           (a)      No Settling Party shall be considered to be in default in the performance of any of its  
13      obligations under this Consent Agreement when performance becomes impossible due to circumstances  
14      beyond the Settling Party's control, including Force Majeure, which includes any act of god, war, fire,  
15      earthquake, windstorm, flood or natural catastrophe; civil disturbance, vandalism, sabotage, or  
16      terrorism; restraint by court order or public authority or agency; action or non-action by, or inability to  
17      obtain the necessary authorizations, approvals, or permits from, any governmental agency  
18      (notwithstanding the good faith efforts by Defendants to obtain such authorizations, approvals, or  
19      permits); or inability to obtain equipment or materials from the marketplace if such materials or  
20      equipment are not reasonably available. Delay in compliance with a specific obligation under this  
21      Consent Agreement due to impossibility and/or Force Majeure as defined in this paragraph shall not  
22      excuse or delay compliance with any or all other obligations required under this Consent Agreement.

23           (b)      If Defendant claims compliance was or is impossible, it shall notify Plaintiff in writing  
24      as soon as possible.

25           (c)      Within ten (10) days of sending the Notice of Nonperformance, Defendant shall send  
26      Plaintiff a description of the reason for the nonperformance and the specific obligations under the  
27      Consent Agreement that are or have been affected by the Force Majeure. It shall describe the anticipated  
28

1 length of time the delay may persist, the cause or causes of the delay, the good faith measures taken or  
2 to be taken by Defendant to prevent or minimize the delay, the schedule by which the measures shall be  
3 implemented, and the anticipated date of compliance. Defendant shall adopt all reasonable measures to  
4 avoid and minimize such delays.

5 (d) The Settling Parties shall meet and confer in good faith concerning the non-performance  
6 and, where the Settling Parties concur that performance was or is impossible due to an event or issue in  
7 paragraph IV.20 (a), despite the timely good faith efforts of Defendant, new deadlines shall be  
8 established.

9 (e) If Plaintiff disagrees with Defendant's notice of impossibility and/or Force Majeure, or  
10 in the event that the Settling Parties cannot timely agree on the terms of new performance deadlines or  
11 requirements, either party shall have the right to invoke the dispute resolution procedure pursuant to  
12 Paragraph III.9 herein. In such proceeding, Defendant shall bear the burden of proving that any delay in  
13 performance of any requirement of this Consent Agreement was caused or will be caused by  
14 impossibility and/or Force Majeure and the extent of any delay attributable to such circumstances.

15 **23. Notices.** Any notices or documents required or provided for by this Agreement or  
16 related thereto that are to be provided to CSPA pursuant to this Agreement shall be hand-delivered or  
17 sent by U.S. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by  
18 electronic mail transmission to the email addresses listed below:

19  
20 William Jennings, Executive Director  
21 California Sportfishing Protection Alliance  
22 3536 Rainer Avenue  
23 Stockton, California 95204  
24 Tel. (209) 464-5067  
25 E-mail: deltakeep@me.com

26 With copies sent to:

27 Andrew L. Packard  
28 Law Offices of Andrew L. Packard  
245 Kentucky Street, Suite B3  
Petaluma, California 94952  
Tel: (707) 782-4060  
E-mail: Andrew@packardlawoffices.com  
and wncarlton@packardlawoffices.com



1 Any notices or documents required or provided for by this Agreement or related thereto that are to be  
2 provided to Defendants pursuant to this Agreement shall be sent by U.S. Mail, postage prepaid, and  
3 addressed as follows or, in the alternative, shall be sent by electronic mail transmission to the email  
4 addresses listed below:

5 Jared G. Carter  
6 Carter Momsen PC  
7 305 N. Main Street  
8 P.O. Box 1709  
9 Ukiah, CA 95482  
10 E-mail: jaredcarter@pacific.net

11 With copies sent to:

12 S. Wayne Rosenbaum  
13 Environmental Law Group LLP  
14 Varco & Rosenbaum  
15 225 Broadway, Suite 1900  
16 San Diego, CA 92101  
17 (619) 231-5853  
18 swr@envirolawyer.com

19 Each Party shall promptly notify the other of any change in the above-listed contact information.

20 24. Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

21 25. If for any reason the Court should decline to approve this Agreement in the form  
22 presented, the Parties shall use their best efforts to work together to modify the Agreement within  
23 thirty (30) days so that it is acceptable to the Court. If the Parties are unable to modify this Agreement  
24 in a mutually acceptable manner, this Agreement shall become null and void.

25 26. This Agreement shall be deemed to have been drafted equally by the Parties, and  
26 shall not be interpreted for or against any Party on the ground that any such party drafted it.

27 27. This Agreement and the attachments contain all of the terms and conditions agreed  
28 upon by the Parties relating to the matters covered by the Agreement, and supersede any and all prior  
and contemporaneous agreements, negotiations, correspondence, understandings, and communications  
of the Parties, whether oral or written, respecting the matters covered by this Agreement.

29 28. This Agreement may be amended or modified only by a writing signed by the Parties  
or their authorized representatives.

1 The Parties hereto enter into this Agreement and respectfully submit it to the Court for its  
2 approval and entry.

3 Dated: November 7, 2017

California Sportfishing Protection Alliance

4  
5 By:

  
William Jennings, Executive Director

6  
7 Dated: November\_\_\_\_\_, 2017

The Shiloh Group, LLC

8  
9 By:

Jared Carter, Managing Member

10  
11 Dated: November\_\_\_\_\_, 2017

Thomas Nelson

12 By:

1 The Parties hereto enter into this Agreement and respectfully submit it to the Court for its  
2 approval and entry.

3 Dated: November\_\_\_\_\_, 2017 California Sportfishing Protection Alliance

4  
5 By: \_\_\_\_\_  
6 William Jennings, Executive Director

7 Dated: November 7, 2017 The Shiloh Group, LLC

8  
9 By:   
10 Jared Carter, Managing Member

11 Dated: November\_\_\_\_\_, 2017 Thomas Nelson

12 By: \_\_\_\_\_  
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1 The Parties hereto enter into this Agreement and respectfully submit it to the Court for its  
2 approval and entry.

3 Dated: November \_\_\_\_\_, 2017

California Sportfishing Protection Alliance

4  
5 By: \_\_\_\_\_

William Jennings, Executive Director

6  
7 Dated: November \_\_\_\_\_, 2017

The Shiloh Group, LLC

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9 By: \_\_\_\_\_

Jared Carter, Managing Member

10  
11 Dated: November 7, 2017

Thomas Nelson

12 By: Thomas J. Nelson



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**EXHIBIT A – Facility Site Map**



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**EXHIBIT B – First CWA Notice of Violation and Intent to Sue Letter**

LAW OFFICES OF  
**ANDREW L. PACKARD**

100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952  
PHONE (707) 763-7227 FAX (707) 763-9227  
INFO@PACKARDLAWOFFICES.COM

September 7, 2016

**VIA CERTIFIED MAIL**

Thomas Nelson, Managing Member  
Shiloh Group LLC  
930 Shiloh Road, Building 44  
Windsor, CA 95492

Brian C. Carter, Agent for Service of Process  
The Shiloh Group LLC  
305 N. Main Street  
Ukiah, CA 95482

**Re: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE  
FEDERAL WATER POLLUTION CONTROL ACT ("CLEAN WATER ACT")  
(33 U.S.C. §§ 1251 *et seq.*)**

Dear Mr. Nelson and Mr. Carter:

This firm represents California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at The Shiloh Group LLC's ("TSG") Industrial Park located at 930 Shiloh Road, in Windsor, California (the "Facility"). This letter is being sent to you as the responsible owners, officers and/or operators of the Facility. Unless otherwise noted, Thomas Nelson and The Shiloh Group, LLC shall hereinafter be collectively referred to as "TSG." CSPA is a non-profit association dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including the waters into which TSG discharges polluted storm water.

TSG is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 92-12-DWQ, Order No. 97-03-DWQ, and Order 2014-0057-DWQ ("General Permit" or "Permit").<sup>1</sup> On July 1, 2015 the 2015 General Permit went into effect, superseding the 1997 General Permit that was operative between 1997 and June 30, 2015. The 2015 General Permit includes many of the same fundamental requirements and implements many of the same statutory requirements as the 1997 General

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<sup>1</sup> TSG submitted a Notice of Intent (NOI) to comply with the General Permit for the Windsor Facility on or about June 30, 2015.



Permit. Violation of both the 1997 and 2015 General Permit provisions is enforceable under the law. 2015 General Permit, Finding A.6.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects TSG to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The Clean Water Act requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. *See* 40 C.F.R. § 135.2. As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, CSPA intends to file suit under Section 505(a) of the Act in federal court against TSG for violations of the Clean Water Act and the Permit.

## **I. Background.**

### **A. The Clean Water Act.**

Congress enacted the CWA in 1972 in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251. The Act prohibits the discharge of pollutants into United States waters except as authorized by the statute. 33 U.S.C. § 1311; *San Francisco BayKeeper, Inc. v. Tiosco Corp.*, 309 F.3d 1153, 1156 (9th Cir. 2002). The Act is administered largely through the NPDES permit program. 33 U.S.C. § 1342. In 1987, the Act was amended to establish a framework for regulating storm water discharges through the NPDES system. Water Quality Act of 1987, Pub. L. 100-4, § 405, 101 Stat. 7, 69 (1987) (codified at 33 U.S.C. § 1342(p)); *see also Env'tl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 840-41 (9th Cir. 2003) (describing the problem of storm water runoff and summarizing the Clean Water Act's permitting scheme). The discharge of pollutants without an NPDES permit, or in violation of a permit, is illegal. *Ecological Rights Found. v. Pacific Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000).

Much of the responsibility for administering the NPDES permitting system has been delegated to the states. *See* 33 U.S.C. § 1342(b); *see also* Cal. Water Code § 13370 (expressing California's intent to implement its own NPDES permit program). The CWA authorizes states with approved NPDES permit programs to regulate industrial storm water discharges through individual permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(b).

Pursuant to Section 402 of the Act, the Administrator of EPA has authorized California's State Board to issue individual and general NPDES permits in California. 33 U.S.C. § 1342

**B. California's General Permit for Storm Water Discharges Associated with Industrial Activities**

Between 1997 and June 30, 2015, the General Permit in effect was Order No. 97-03-DWQ, which CSPA refers to as the "1997 General Permit." On July 1, 2015, pursuant to Order No. 2015-0057-DWQ the General Permit was reissued, including many of the same fundamental terms as the prior permit. For purposes of this notice letter, CSPA refers to the reissued permit as the "2015 General Permit." The 2015 General Permit rescinded in whole the 1997 General Permit, except for the expired permit's requirement that annual reports be submitted by July 1, 2015, and for purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Facilities discharging, or having the potential to discharge, storm water associated with industrial activities that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent to Comply ("NOI"). 1997 General Permit, Provision E.1; 2015 General Permit, Standard Condition XXI.A. Facilities must file their NOIs before the initiation of industrial operations. *Id.* Facilities must strictly comply with all of the terms and conditions of the General Permit. A violation of the General Permit is a violation of the CWA. The General Permit contains three primary and interrelated categories of requirements: (1) discharge prohibitions, receiving water limitations and effluent limitations; (2) Storm Water Pollution Prevention Plan ("SWPPP") requirements; and (3) self-monitoring and reporting requirements.

**C. TSG's Windsor Facility**

TSG's primary industrial activities at the approximately 31-acre Facility vary with the approximately 60-80 tenant businesses. Among the industrial tenants, activities include fencing installation, wood pallet construction, structural rebar assembly, auto repair and trucking operations. The industrial activities at the Facility fall under a number of Standard Industrial Classification ("SIC") Codes, depending on what businesses are operating at any given time. As of the June 25, 2015 SWPPP the industrial activities at the Facility fall under the following SIC Codes:

- |  |  |
|--|--|
| - 0721 – "Crop Planting, Cultivating, and Protecting"                          | - 1799 – "Special Trade Contractors, Not Elsewhere Classified" |
| - 0762 – "Farm Management Services"  | - 2448 – "Wood Pallets and Skids"                              |
| - 0782 – "Lawn and Garden Services"  | - 2449 – "Wood Containers, Not Elsewhere Classified"           |
| - 1521 – "General Contractors-Single-Family Houses"                            | - 3449 – "Miscellaneous Structural Metal Work"                 |
| - 1522 – "General Contractors-Residential Buildings, Other Than Single-Family" | - 4212 – "Local Trucking Without Storage"                      |

- 1531 – “Operative Builders”
- 1541 – “General Contractors-Industrial Buildings and Warehouses”
- 1542 – “General Contractors-Nonresidential Buildings, Other than Industrial Buildings and Warehouses”
- 1731 – “Electrical Work”
- 1741 – “Masonry, Stone Setting, and Other Stone Work”
- 1742 – “Plastering, Drywall, Acoustical, and Insulation Work”
- 1761 – “Roofing, Siding, and Sheet Metal Work”
- 1771 – “Concrete Work”
- 1796 – “Installation or Erection of Building Equipment, Not Elsewhere”
- 4213 – “Trucking, Except Local”
- 4214 – “Local Trucking With Storage”
- 4226 – “Special Warehousing and Storage, Not Elsewhere Classified”
- 7538 – “General Automotive Repair Shops”
- 7692 – “Welding Repair”
- 8711 – “Engineering Services”
- 8744 – “Facilities Support Management Services”
- 8999 – “Services, Not Elsewhere Classified”

TSG collects and discharges storm water associated with industrial activities at the Facility through at least fifteen (15) discharge points into Pruitt Creek, which joins Pool Creek and Windsor Creek, which drain into Mark West Creek, which drains into the Russian River. Pruitt Creek, Pool Creek, Windsor Creek, Mark West Creek, and the Russian River are waters of the United States within the meaning of the Clean Water Act.

The General Permit requires TSG to analyze storm water samples for TSS, pH, and Oil and Grease. 1997 General Permit, Section B.5.c.i; 2015 General Permit, Section XI.B.6. Facilities under SIC Codes 2448, 2449 and 3449 must also analyze storm water samples for Chemical Oxygen Demand (“COD”); Zinc (“Zn”); Nitrate plus Nitrite Nitrogen (“N+N”); Iron (“Fe”); and, Aluminum (“Al”). 1997 General Permit, Tables 1-2; 2015 General Permit Tables 1-2.

## **II. TSG’s Violations of the Act and Permit.**

Based on its review of available public documents, CSPA is informed and believes that TSG is in ongoing violation of both the substantive and procedural requirements of the CWA and the General Permit. These violations are ongoing and continuous. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TSG is subject to penalties for violations of the Act since September 7, 2011.

### **A. TSG Discharges Storm Water Containing Pollutants in Violation of the General Permit’s Discharge Prohibitions, Receiving Water Limitations and Effluent Limitations.**

TSG's storm water sampling results provide evidence of TSG's failure to comply with the General Permit's discharge prohibitions, receiving water limitations and effluent limitations. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

### **1. Applicable Water Quality Standards.**

The General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. 1997 General Permit, Discharge Prohibition A.2; 2015 General Permit, Discharge Prohibition III.C. The General Permit also prohibits discharges that violate any discharge prohibition contained in the applicable Regional Water Board's Basin Plan or statewide water quality control plans and policies. 1997 General Permit, Receiving Water Limitation C.2; 2015 General Permit, Discharge Prohibition III.D. Furthermore, storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards in any affected receiving water. 1997 General Permit, Receiving Water Limitations C.1, C.2; 2015 General Permit, Receiving Water Limitations VI.A, VI.B.

Dischargers are also required to prepare and submit documentation to the Regional Board upon determination that storm water discharges are in violation of the General Permit's Receiving Water Limitations. 1997 General Permit, p. VII; 2015 General Permit, Special Condition XX.B. The documentation must describe changes the discharger will make to its current storm water best management practices ("BMPs") in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. *Id.*

The California Toxics Rule ("CTR") is an applicable water quality standard under the Permit, violation of which is a violation of Permit conditions. *Cal. Sportfishing Prot. Alliance v. Chico Scrap Metal, Inc.*, 2015 U.S. Dist. LEXIS 108314, \*21 (E.D. Cal. 2015). CTR establishes numeric receiving water limits for toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes the following numeric limits for pollutants discharged by TSG: Copper – 0.013 mg/L (maximum concentration); Chromium (III) – 0.550 mg/L (maximum concentration); Lead – 0.065 mg/L (maximum concentration); and Zinc – 0.112 mg/L (maximum concentration). The *Water Quality Control Plan for the North Coast Region (Revised May 2011)* ("Basin Plan") also sets forth water quality standards and prohibitions applicable to TSG's storm water discharges. The Basin Plan identifies present and potential beneficial uses for the Russian River, which include municipal and domestic water supply, hydropower generation, agricultural supply, industrial service supply, navigation, wildlife habitat, warm freshwater habitat, cold freshwater habitat, warm and cold spawning, and contact and non-contact water recreation.

### **2. Applicable Effluent Limitations.**

Dischargers are required to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable ("BAT") for toxic



and nonconventional pollutants and best conventional pollutant control technology ("BCT") for conventional pollutants. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. Conventional pollutants include Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. 40 C.F.R. §§ 401.15-16.

Under the General Permit, benchmark levels established by the EPA ("EPA benchmarks") serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. *Santa Monica Baykeeper v. Kramer Metals*, 619 F.Supp.2d 914, 920, 923 (C.D. Cal 2009); Final Reissuance of NPDES Storm Water Multi-Sector General Permit for Industrial Activities, 65 Fed. Reg. 64746, 64766 (Oct. 30, 2000); 1997 General Permit, Effluent Limitations B.5-6; 2015 General Permit, Exceedance Response Action XII.A.

The following EPA benchmarks have been established for pollutants discharged by TSG: Total Suspended Solids – 100 mg/L; Oil & Grease – 15.0 mg/L; Aluminum – 0.75 mg/L; Cadmium – 0.0159 mg/L; Copper – 0.0636 mg/L; Iron – 1.0 mg/L; Lead – 0.0816 mg/L; Nickel – 1.417 mg/L; Zinc – 0.117 mg/L; Chemical Oxygen Demand – 120 mg/L; Nitrate plus Nitrite Nitrogen – 0.68 mg/L.

### 3. TSG's Storm Water Sample Results

The following discharges of pollutants from the Facility have violated the discharge prohibitions, receiving water limitations and effluent limitations of the Permit:

#### a. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
4/22/16	SW2	TSS	230	100
4/22/16	SW7	TSS	350	100
3/21/16	SW7	TSS	490	100
12/21/15	SW-7	TSS	280	100
10/31/14	SW-2	TSS	210	100
10/31/14	SW-7	TSS	670	100
3/25/14	SW-2	TSS	170	100
3/25/14	SW-7	TSS	310	100
3/13/12	SW-2	TSS	260	100

3/13/12	SW-7	TSS	190	100
10/22/12	SW-2	TSS	410	100
10/22/12	SW-7	TSS	690	100
3/13/12	SW-1	TSS	110	100
3/13/12	SW-2	TSS	170	100
1/19/12	SW-1	TSS	380	100
1/19/12	SW-2	TSS	230	100
1/19/12	SW-4	TSS	270	100
1/19/12	SW-5	TSS	570	100
1/19/12	SW-6	TSS	650	100

**b. Discharge of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark and CTR Values**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)	CTR Criteria (mg/L)
4/22/16	SW2	Zn	0.24	0.117	0.12
12/21/15	SW-2	Zn	0.17	0.117	0.12
11/9/15	SW2	Zn	0.12	0.117	0.12
10/31/14	SW-2	Zn	0.27	0.117	0.12
3/25/14	SW-2	Zn	0.19	0.117	0.12
3/13/12	SW-2	Zn	0.30	0.117	0.12
10/22/12	SW-2	Zn	0.44	0.117	0.12
3/13/12	SW-1	Zn	0.16	0.117	0.12
3/13/12	SW-2	Zn	0.37	0.117	0.12
1/19/12	SW-1	Zn	0.33	0.117	0.12
1/19/12	SW-2	Zn	0.38	0.117	0.12
1/19/12	SW-3	Zn	0.35	0.117	0.12
1/19/12	SW-4	Zn	0.34	0.117	0.12
1/19/12	SW-5	Zn	0.45	0.117	0.12
1/19/12	SW-6	Zn	1.7	0.117	0.12

**c. Discharge of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
4/22/16	SW2	Al	8.8	0.75
3/21/16	SW2	Al	1.1	0.75
12/21/15	SW-2	Al	4.5	0.75
11/9/15	SW2	Al	2.0	0.75
10/31/14	SW-2	Al	8.0	0.75
3/25/14	SW-2	Al	4.1	0.75
3/13/12	SW-2	Al	6.4	0.75
10/22/12	SW-2	Al	11	0.75
3/13/12	SW-1	Al	5.9	0.75
3/13/12	SW-2	Al	6.6	0.75
1/19/12	SW-1	Al	9.5	0.75
1/19/12	SW-2	Al	5.9	0.75
1/19/12	SW-3	Al	1.7	0.75
1/19/12	SW-4	Al	7.8	0.75
1/19/12	SW-5	Al	18	0.75
1/19/12	SW-6	Al	18	0.75

**d. Discharge of Storm Water Containing Copper (Cu) at Concentrations in Excess of Applicable EPA Benchmark and CTR Values**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)	CTR Criteria (mg/L)
4/22/16	SW2	Cu	0.075	0.0332	0.013
12/21/15	SW-2	Cu	0.057	0.0332	0.013
10/31/14	SW-2	Cu	0.056	0.0332	0.013
3/25/14	SW-2	Cu	0.062	0.0332	0.013
11/19/13	SW-2	Cu	0.095	0.0332	0.013

3/13/12	SW-2	Cu	0.12	0.0332	0.013
10/22/12	SW-2	Cu	0.12	0.0332	0.013
3/13/12	SW-1	Cu	0.053	0.0332	0.013
3/13/12	SW-2	Cu	0.072	0.0332	0.013
1/19/12	SW-1	Cu	0.091	0.0332	0.013
1/19/12	SW-2	Cu	0.075	0.0332	0.013
1/19/12	SW-5	Cu	0.13	0.0332	0.013
1/19/12	SW-6	Cu	0.28	0.0332	0.013

**e. Discharge of Storm Water Containing Iron (Fe) at  
Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
4/22/16	SW2	Fe	9.9	1.00
3/21/16	SW2	Fe	1.5	1.00
12/21/15	SW-2	Fe	5.9	1.00
11/9/15	SW2	Fe	2.8	1.00
10/31/14	SW-2	Fe	11	1.00
3/25/14	SW-2	Fe	6.1	1.00
3/13/12	SW-2	Fe	11	1.00
10/22/12	SW-2	Fe	17	1.00
3/13/12	SW-1	Fe	7.3	1.00
3/13/12	SW-2	Fe	9.2	1.00
1/19/12	SW-1	Fe	14	1.00
1/19/12	SW-2	Fe	9.9	1.00
1/19/12	SW-3	Fe	2.5	1.00
1/19/12	SW-4	Fe	12	1.00
1/19/12	SW-5	Fe	27	1.00
1/19/12	SW-6	Fe	33	1.00



**f. Discharge of Storm Water Containing Lead (Pb) at Concentrations in Excess of Applicable EPA Benchmark and CTR Values**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)	CTR Criteria (mg/L)
3/13/12	SW-2	Pb	0.069	0.0816	0.065
1/19/12	SW-3	Pb	0.12	0.0816	0.065
1/19/12	SW-6	Pb	0.33	0.0816	0.065

**g. Discharge of Storm Water Containing Nitrate plus Nitrite Nitrogen (N+N) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
4/22/16	SW2	N+N	1.1	0.68
3/21/16	SW2	N+N	.77	0.68
12/21/15	SW-2	N+N	3.0	0.68
11/9/15	SW2	N+N	12.0	0.68
10/31/14	SW-2	N+N	8.0	0.68
3/25/14	SW-2	N+N	11	0.68
11/19/13	SW-2	N+N	3.7	0.68
3/13/12	SW-2	N+N	6.2	0.68
10/22/12	SW-2	N+N	7.7	0.68
3/13/12	SW-1	N+N	1.8	0.68
3/13/12	SW-2	N+N	1.8	0.68
1/19/12	SW-1	N+N	4.9	0.68
1/19/12	SW-2	N+N	6.1	0.68
1/19/12	SW-3	N+N	2.3	0.68
1/19/12	SW-4	N+N	1.4	0.68
1/19/12	SW-5	N+N	6.0	0.68
1/19/12	SW-6	N+N	6.6	0.68

**h. Discharge of Storm Water Containing pH at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
3/25/14	SW-7	pH	10.02	6.0 – 9.0

**i. TSG's Sample Results Are Evidence of Violations of the General Permit**

TSG's sample results demonstrate violations of the Permit's discharge prohibitions, receiving water limitations and effluent limitations set forth above. CSPA is informed and believes that TSG has known that its storm water contains pollutants at levels exceeding General Permit standards since at least September 7, 2011.

CSPA alleges that such violations occur each time storm water discharges from the Facility. Attachment A hereto, sets forth the specific rain dates on which CSPA alleges that TSG has discharged storm water containing impermissible levels of Total Suspended Solids, pH, Aluminum, Copper, Iron, Lead, Zinc, and Nitrate plus Nitrite Nitrogen in violation of the General Permit. 1997 General Permit, Discharge Prohibition A.2, Receiving Water Limitations C.1 and C.2; 2015 General Permit, Discharge Prohibitions III.C and III.D, Receiving Water Limitations VI.A, VI.B.

**4. TSG Has Failed to Implement BAT and BCT**

Dischargers must implement BMPs that fulfill the BAT/BCT requirements of the CWA and the General Permit to reduce or prevent discharges of pollutants in their storm water discharges. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. To meet the BAT/BCT standard, dischargers must implement minimum BMPs and any advanced BMPs set forth in the General Permit's SWPPP Requirements provisions where necessary to reduce or prevent pollutants in discharges. *See* 1997 General Permit, Sections A.8.a-b; 2015 General Permit, Sections X.H.1-2.

TSG has failed to implement the minimum BMPs required by the General Permit, including: good housekeeping requirements; preventive maintenance requirements; spill and leak prevention and response requirements; material handling and waste management requirements; erosion and sediment controls; employee training and quality assurance; and record keeping. Permit, Section X.H.1(a-g). TSG has further failed to implement advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water sufficient to meet the BAT/BCT standards, including: exposure minimization BMPs; containment and discharge reduction BMPs; treatment control BMPs; or other advanced BMPs necessary to comply with the General Permit's effluent limitations. 1997 General Permit, Section A.8.b; 2015 General Permit, Sections X.H.2.

Each day that TSG has failed to develop and implement BAT and BCT at the Facility in

violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). TSG has been in violation of the BAT and BCT requirements at the Facility every day since at least September 7, 2011.

**5. TSG Has Failed to Implement an Adequate Monitoring Implementation Plan.**

The General Permit requires dischargers to implement a Monitoring Implementation Plan. 1997 General Permit Section B; 2015 General Permit, Section X.I. As part of their monitoring plan, dischargers must identify all storm water discharge locations. 1997 General Permit Section A.4.b; 2015 General Permit, Section X.I.2. Dischargers must then conduct monthly visual observations of each drainage area, as well as visual observations during discharge sampling events. 1997 General Permit Section B.4 and 8; 2015 General Permit, Section XI.A.1 and 2.

Dischargers must collect and analyze storm water samples from two (2) storm events within the first half of each reporting year (July 1 to December 31) and two (2) storm events during the second half of each reporting year (January 1 to June 3). 2015 General Permit, Section XI.B. Section XI.B requires dischargers to sample and analyze during the wet season for basic parameters such as pH, total suspended solids (“TSS”) and oil and grease (“O&G”), certain industry-specific parameters set forth in Table 2 of the General Permit, and other pollutants likely to be in the storm water discharged from the facility based on the pollutant source assessment. 2015 General Permit, Section XI.B.6. Dischargers must submit all sampling and analytical results via SMARTS within thirty (30) days of obtaining all results for each sampling event. 2015 General Permit Section XI.B.11. TSG has failed to develop and implement an adequate Monitoring Implementation Plan. These failures include: not sampling from all discharge locations, not analyzing all samples for all required parameters and using incorrect test methods to analyze certain parameters.

Each day that TSG has failed to develop and implement an adequate Monitoring Implementation Plan is a separate and distinct violation of the Act and Permit. TSG has been in violation of the Monitoring Implementation Plan requirements every day since at least September 7, 2011.

**6. TSG Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

The General Permit requires dischargers to develop and implement a site-specific SWPPP. 1997 General Permit, Section A.1; 2015 General Permit, Section X.A. The SWPPP must include, among other elements: (1) the facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a description of potential pollution sources; (5) an assessment of potential pollutant sources; (6) minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) annual comprehensive facility compliance evaluation; and (10) the date that the SWPPP was initially prepared and the date of each SWPPP amendment, if applicable. *See id.*

Dischargers must revise their SWPPP whenever necessary and certify and submit via the Regional Board's Storm Water Multiple Application and Report Tracking System ("SMARTS") their SWPPP within 30 days whenever the SWPPP contains significant revisions(s); and, certify and submit via SMARTS for any non-significant revisions not more than once every three (3) months in the reporting year. 2015 General Permit, Section X.B; see also 1997 General permit, Section A.

CSPA's investigation indicates that TSG has been operating with an inadequately developed or implemented SWPPP in violation of General Permit requirements. TSG has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in the Facility's numerous effluent limitation violations. Each day TSG failed to develop and implement an adequate SWPPP is a violation of the General Permit. The SWPPP violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. TSG have been in violation of these requirements at the Facility every day since at least September 7, 2011.

### **III. Persons Responsible for the Violations.**

CSPA puts TSG on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts TSG on formal notice that it intends to include those persons in this action.

### **IV. Name and Address of Noticing Parties.**

The name, address and telephone number of each of the noticing parties is as follows:

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance  
3536 Rainer Avenue  
Stockton, CA 95204  
(209) 464-5067

### **V. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard  
William N. Carlon  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard North, Suite 301  
Petaluma, CA 94952  
(707) 763-7227  
Andrew@PackardLawOffices.com



**VI. Conclusion**

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the CWA against TSG and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew L. Packard", written over a horizontal line.

Andrew L. Packard  
Law Offices of Andrew L. Packard  
Counsel for California Sportfishing Protection  
Alliance

**SERVICE LIST**

**VIA CERTIFIED MAIL**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Jared Blumenfield, Regional Administrator  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Hon. Loretta Lynch  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Thomas Howard, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Matthias St. John, Executive Officer  
North Coast Regional Water Quality Control Board  
5550 Skylane Boulevard Suite A  
Santa Rosa, CA 95403

**ATTACHMENT A**  
**Notice of Intent to File Suit, TSG**  
**Significant Rain Events,\* September 7, 2011 – September 7, 2016**

October 4, 2011	October 22, 2012	June 26, 2013	November 30, 2014
October 5, 2011	October 23, 2012	September 21, 2013	December 1, 2014
October 6, 2011	October 24, 2012	September 22, 2013	December 2, 2014
October 11, 2011	October 25, 2012	October 1, 2013	December 3, 2014
November 6, 2011	November 1, 2012	November 19, 2013	December 4, 2014
November 12, 2011	November 17, 2012	November 20, 2013	December 6, 2014
November 20, 2011	November 18, 2012	December 7, 2013	December 9, 2014
November 24, 2011	November 20, 2012	February 2, 2014	December 11, 2014
November 25, 2011	November 21, 2012	February 3, 2014	December 12, 2014
December 15, 2011	November 28, 2012	February 6, 2014	December 13, 2014
January 20, 2012	November 29, 2012	February 8, 2014	December 15, 2014
January 21, 2012	November 30, 2012	February 9, 2014	December 16, 2014
January 22, 2012	December 1, 2012	February 10, 2014	December 17, 2014
January 23, 2012	December 2, 2012	February 16, 2014	December 18, 2014
February 7, 2012	December 3, 2012	February 27, 2014	December 19, 2014
February 8, 2012	December 5, 2012	February 28, 2014	December 20, 2014
February 11, 2012	December 16, 2012	March 1, 2014	December 21, 2014
February 13, 2012	December 17, 2012	March 4, 2014	January 17, 2015
February 29, 2012	December 21, 2012	March 6, 2014	February 7, 2015
March 1, 2012	December 22, 2012	March 26, 2014	February 8, 2015
March 12, 2012	December 23, 2012	March 27, 2014	February 9, 2015
March 13, 2012	December 24, 2012	March 29, 2014	March 23, 2015
March 14, 2012	December 25, 2012	March 30, 2014	April 6, 2015
March 15, 2012	December 26, 2012	April 1, 2014	April 7, 2015
March 16, 2012	December 29, 2012	April 2, 2014	April 8, 2015
March 17, 2012	January 6, 2013	April 4, 2014	April 25, 2015
March 23, 2012	January 24, 2013	April 5, 2014	July 10, 2015
March 24, 2012	February 20, 2013	April 26, 2014	September 17, 2015
March 25, 2012	March 6, 2013	September 18, 2014	October 29, 2015
March 27, 2012	March 7, 2013	September 25, 2014	November 2, 2015
March 28, 2012	March 20, 2013	October 15, 2014	November 9, 2015
March 31, 2012	March 21, 2013	October 25, 2014	November 10, 2015
April 1, 2012	March 31, 2013	October 26, 2014	November 15, 2015
April 10, 2012	April 1, 2013	November 1, 2014	November 25, 2015
April 11, 2012	April 4, 2013	November 13, 2014	December 4, 2015
April 12, 2012	April 5, 2013	November 19, 2014	December 5, 2015
April 13, 2012	May 28, 2013	November 20, 2014	December 6, 2015
April 24, 2012	June 10, 2013	November 21, 2014	December 7, 2015
April 25, 2012	June 25, 2013	November 22, 2014	December 11, 2015
December 10, 2015	March 14, 2016	November 29, 2014	December 13, 2015
December 14, 2015	April 9, 2016		

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**ATTACHMENT A**  
**Notice of Intent to File Suit, TSG**  
**Significant Rain Events,\* September 7, 2011 – September 7, 2016**

December 19, 2015	April 10, 2016
December 21, 2015	April 14, 2016
December 22, 2015	April 22, 2016
December 24, 2015	April 23, 2016
January 4, 2016	May 8, 2016
January 5, 2016	May 22, 2016
January 6, 2016	June 18, 2016
January 7, 2016	
January 9, 2016	
January 10, 2016	
January 13, 2016	
January 14, 2016	
January 15, 2016	
January 16, 2016	
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March 7, 2016	
March 8, 2016	
March 9, 2016	
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March 12, 2016	
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March 21, 2016	
March 22, 2016	

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.



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**EXHIBIT C –Proposition 65 Notice of Violation and Intent to Sue**

LAW OFFICES OF  
**ANDREW L. PACKARD**

245 KENTUCKY STREET, SUITE B3, PETALUMA, CA 94952

PHONE (707) 763-7227 FAX (707) 763-9227

INFO@PACKARDLAWOFFICES.COM

November 4, 2016

**VIA CERTIFIED MAIL**

Public Enforcement Agencies  
(See Certificate of Service, attached)

Thomas Nelson  
The Shiloh Group LLC  
930 Shiloh Road, Building 44  
Windsor, CA 95492

Brian C. Carter, Agent for Service of Process  
The Shiloh Group LLC  
305 N. Main Street  
Ukiah, CA 95482

**NOTICE OF VIOLATION AND INTENT TO FILE SUIT UNDER  
HEALTH & SAFETY CODE § 25249.5 (California Safe Drinking Water and  
Toxic Enforcement Act, a.k.a. "Proposition 65")**

Dear Public Enforcement Agencies, Mr. Nelson and Mr. Carter:

This office represents the California Sportfishing Protection Alliance ("CSPA"), a California non-profit public benefit corporation with over 2,000 members. CSPA is dedicated to safeguarding the public from health hazards, reducing the use and misuse of toxic substances, encouraging corporate responsibility, and ensuring safe drinking water for consumers. CSPA brings this action in the public interest, pursuant to Health & Safety Code § 25249.7(d). Unless otherwise noted, The Shiloh Group, LLC shall hereinafter be referred to as the "Violator."

CSPA has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code § 25249.5 *et seq.* (commonly referred to as "Proposition 65"). This letter serves to provide the public prosecutors and the Violator with CSPA's notification of these violations and intent to sue.

Pursuant to Health & Safety Code § 25249.7(d), CSPA intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public prosecutors commence and diligently prosecute an action against the Violator for the same violations. A summary of the statute and its implementing regulations,

which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

### **Identity of Listed Chemicals**

The Violator is a “person[s] in the course of doing business” as defined in Health & Safety Code § 25249.11, that discharges, deposits, or releases Proposition 65-listed chemicals into existing sources of drinking water not designated as exempt by the Safe Drinking Water Act of 1974 (42 U.S.C. § 300(f) *et seq.*) in violation of Health and Safety Code § 25249.5. These violations involve the discharge and/or release of the chemicals listed below:

- 1,1,1,2-Tetrachloroethane
- 1,1,2,2-Tetrachloroethane
- 1,1-Dichloroethane
- 1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin
- 1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin
- 1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin
- 1,2,3-Trichloropropane
- 1,2-Dibromo-3-chloropropane
- 1,2-Dichloropropane
- 1,3-Dichloropropane
- 2,3,7,8-Tetrachlorodibenzo-p-dioxin
- 2,4-Dinitrotoluene
- 2,6-Dinitrotoluene
- 3,3'-Dichlorobenzidine
- Aldrin
- Arsenic
- Azobenzene
- Benzene
- Beryllium
- bis(2-Chloroethyl)ether
- Bromodichloromethane
- Bromoform
- Cadmium
- Chloroethane
- Chloroform
- Chromium
- Chrysene
- Cobalt
- Dibenz(a,h)anthracene
- Dibenzofuran
- Dieldrin
- Diethyl
- Dimethyl
- Di-n-butylphthalate
- Endrin
- Ethylbenzene
- Heptachlor
- Hexachlorobenzene
- Hexachlorobutadiene
- Hexachloroethane
- Indeno(1,2,3-cd)pyrene
- Lead
- Mercury
- Methyl
- Naphthalene
- Nickel
- Nitrobenzene
- N-Nitrosodi-n-propylamine
- N-Nitrosodiphenylamine
- Pentachlorophenol
- Polychlorinated Biphenyls
- Styrene
- Tetrachloroethene
- Toluene
- Toxaphene
- Vinyl acetate

These chemicals have been on the Proposition 65 list for more than the twenty months grace period provided under Health & Safety Code § 25249.9(a). These Proposition 65-listed toxins have been discharged, and are likely to continue to be discharged, by the Violator from the Shiloh Group LLC facility located at 930 Shiloh Road in Windsor ("Facility") in violation of Health & Safety Code § 25249.5.

### **Sources of Drinking Water**

The Violator is discharging the chemicals listed above from the Facility to designated sources of drinking water in violation of Proposition 65. A "source of drinking water" means either a present source of drinking water or water which is identified or designated in a Water Quality Control Plan adopted by a Regional Water Quality Control Board as being suitable for domestic or municipal uses. Health & Safety Code § 25249.11(d).

The Violator is allowing storm water contaminated with the chemicals listed above to discharge and/or release from the Facility into Pruitt Creek, which joins with Pool Creek, Windsor Creek, and Mark West Creek, which ultimately drain to the Russian River. The Russian River is designated as an existing source of municipal and domestic drinking water in the "*Water Quality Control Plan for the North Coast Region (Revised May 2011)*," generally referred to as the "Basin Plan." Basin Plan, 2-8.00.

### **Approximate Time Period of Violations**

Information available to CSPA indicates that these ongoing unlawful discharges have been occurring since at least approximately 2008. As part of its public interest mission and to rectify these ongoing violations of California law, CSPA is interested in resolving these violations expeditiously, without the necessity of costly and protracted litigation.

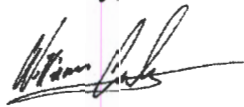
CSPA's address is 3536 Rainier Avenue, Stockton, CA 95204. The name and telephone number of the noticing individual within CSPA is Bill Jennings, Executive Director, (209) 464-5067. However, CSPA has retained legal counsel to represent it in this matter. Therefore, please direct all communications regarding this notice to CSPA's outside counsel, listed below.



Notice of Violation, Health & Safety Code §25249.5 *et seq.*  
November 4, 2016  
Page 4

Andrew L. Packard  
William N. Carlon  
Law Offices of Andrew L. Packard  
245 Kentucky Street, Suite B3  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
andrew@PackardLawOffices.com  
wncarlon@PackardLawOffices.com

Sincerely,

A handwritten signature in black ink, appearing to read "William N. Carlon", with a long horizontal flourish extending to the right.

William N. Carlon  
Attorneys for Plaintiff  
California Sportfishing Protection Alliance

cc: Certificate of Service

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**EXHIBIT D – Second CWA Notice of Violation and Intent to Sue Letter**

LAW OFFICES OF  
**ANDREW L. PACKARD**

245 KENTUCKY STREET, SUITE B3, PETALUMA, CA 94952

PHONE (707) 763-7227 FAX (707) 763-9227

INFO@PACKARDLAWOFFICES.COM

December 9, 2016

**VIA CERTIFIED MAIL**

Thomas Nelson, Managing Member  
Shiloh Group LLC  
930 Shiloh Road, Building 44  
Windsor, CA 95492

Brian C. Carter, Agent for Service  
The Shiloh Group LLC  
305 N. Main Street  
Ukiah, CA 95482

**Re: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE  
FEDERAL WATER POLLUTION CONTROL ACT ("CLEAN WATER ACT")  
(33 U.S.C. §§ 1251 *et seq.*)**

Dear Mr. Nelson and Mr. Carter:

This firm represents California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at The Shiloh Group LLC's ("TSG") Industrial Park located at 930 Shiloh Road, in Windsor, California (the "Facility"). This letter is being sent to you as the responsible owners, officers and/or operators of the Facility. Unless otherwise noted, Thomas Nelson and The Shiloh Group, LLC shall hereinafter be collectively referred to as "TSG." CSPA is a non-profit association dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including the waters into which TSG discharges polluted storm water.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects TSG to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The Clean Water Act requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water

pollution control agency for the State in which the violations occur. *See* 40 C.F.R. § 135.2. As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, CSPA intends to file suit under Section 505(a) of the Act in federal court against TSG for violations of the Clean Water Act and the Permit.

**I. The Shiloh Group, LLC Is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States Without a Permit.**

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984) (citing 33 U.S.C. § 1311(a)). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.30(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made water bodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The Shiloh Group, LLC currently discharges, and will continue to discharge, Total Suspended Solids, Aluminum, Chromium, Copper, Iron, Lead, Nickel, Zinc, Nitrate plus Nitrite Nitrogen, and Chemical Oxygen Demand (“the Pollutants”) from the Facility through numerous discharge points connected to a system of underground storm water conveyances throughout the 31-acre Facility and into Pruitt Creek, which joins Pool Creek and Windsor Creek, which drain into Mark West Creek, which drains into the Russian River without a valid NPDES permit. Pruitt Creek, Pool Creek, Windsor Creek, Mark West Creek, and the Russian River are waters of the United States. Accordingly, The Shiloh Group LLC’s discharges of water containing Pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that Shiloh Group, LLC has the duty to apply for an NPDES permit, because it discharges pollutants from the Facility to navigable waters. The Shiloh Group, LLC has failed to meet this duty, and has not applied



for a current NPDES permit, violating Section 301(a) of the Act. The Shiloh Group, LLC has discharged, and continues to discharge, pollutants from the Facility to waters of the United States every day that there has been or will be any measurable discharge<sup>1</sup> of storm water from the Facility without a permit since December 1, 2016, including but not limited to December 7, 8 and 9, 2016. These discharges are the activities alleged to have caused and continuing to cause these violations. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

These unlawful discharges are ongoing. The Shiloh Group, LLC is subject to penalties for violations of the Act since December 1, 2016.

## **II. Persons Responsible for the Violations.**

CSPA puts TSG on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts TSG on formal notice that it intends to include those persons in this action.

## **III. Name and Address of Noticing Parties.**

The name, address and telephone number of each of the noticing parties is as follows:

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance  
3536 Rainer Avenue  
Stockton, CA 95204  
(209) 464-5067

## **IV. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard  
William N. Carlon  
Law Offices of Andrew L. Packard  
245 Kentucky Street, Suite B3  
Petaluma, CA 94952  
(707) 763-7227  
Andrew@PackardLawOffices.com


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<sup>1</sup> A “measurable discharge” is presumed to occur during a storm event of 0.1 inches of precipitation or more.

**V. Conclusion**

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the CWA against TSG and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew L. Packard", written in a cursive style.

---

Andrew L. Packard  
Law Offices of Andrew L. Packard  
Counsel for California Sportfishing Protection Alliance

**SERVICE LIST**

**VIA CERTIFIED MAIL**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Jared Blumenfield, Regional Administrator  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Hon. Loretta Lynch  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

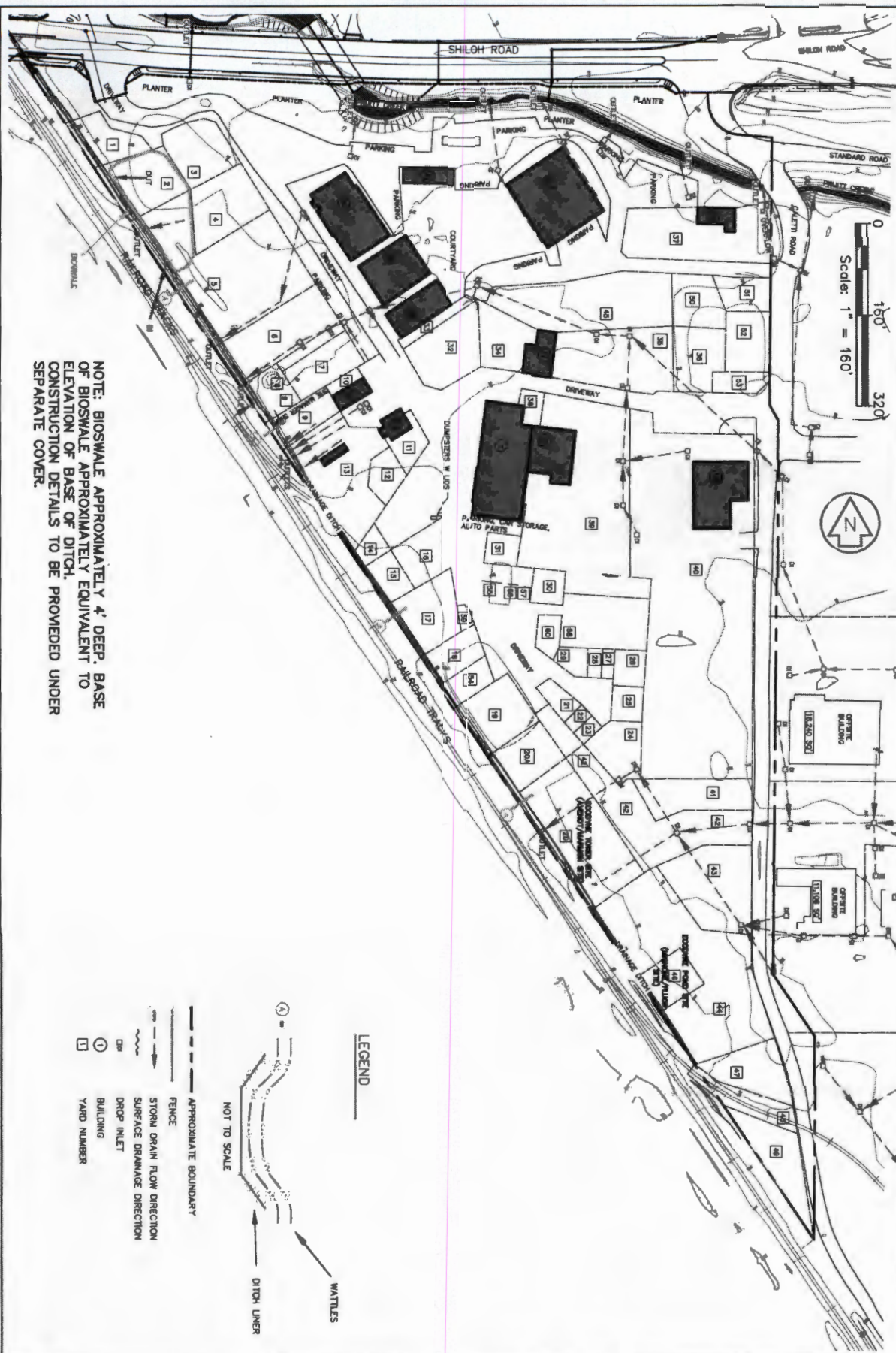
Thomas Howard, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Matthias St. John, Executive Officer  
North Coast Regional Water Quality Control Board  
5550 Skylane Boulevard Suite A  
Santa Rosa, CA 95403

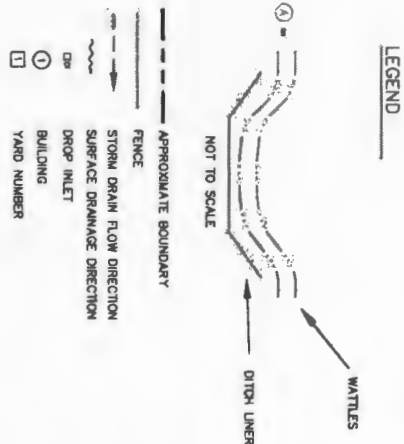
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**EXHIBIT E – CONSTRUCTION DRAWING AND MAINTENANCE SCHEDULE**





NOTE: BIOSWALE APPROXIMATELY 4' DEEP. BASE OF BIOSWALE APPROXIMATELY EQUIVALENT TO ELEVATION OF BASE OF DITCH. CONSTRUCTION DETAILS TO BE PROVIDED UNDER SEPARATE COVER.



930 SHILOH RD., BLDG. 44, SUITE J  
WINDSOR, CA 95492  
PHONE: 707-857-8408 FAX: 707-837-7334

DRAFT FOR EXHIBIT B  
930 SHILOH ROAD  
WINDSOR, CA 95492

JOB #: 2292.01

DATE: 10/20/2017

DRAWN: MAL

FIGURE  
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NOTE: The "schedule of maintenance activities to ensure the proper operation of these structural measures" (referenced in Paragraph 1.3 of this Agreement) is expected to be completed shortly, and will be incorporated herein, as part of **Exhibit E**, before this document is filed with the Court.

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**EXHIBIT F – LIABILITY RELEASE**

## **EXHIBIT F**

### **TSG FACILITY ACCESS VISITOR RELEASE FORM AND WAIVER OF LIABILITY**

In consideration of being granted the right to visit The Shiloh Group Property ("TSG") located at 930 Shiloh Road, in Windsor, California (the "Property"), I acknowledge, agree and represent that I am aware that the Property is a commercial business park which can be a dangerous environment, despite the safety precautions taken by TSG. I further agree and warrant as follows:

1. To the fullest extent permitted by law, I hereby release, waive, and discharge, on behalf of myself, my heirs, assigns, guardians, and legal representatives, any and all claims, damages, or losses I may have against TSG, its individual officers, administrators, employees and agents, acting officially or otherwise, arising from any and all injuries that I may incur during my visit to the Site, including, but not limited to, liability for property damage or loss, or bodily, personal or mental injury, including death, and further covenant that I will not sue TSG for any and all injuries or claims I may suffer during any Site visit.
2. I agree to hold harmless and indemnify TSG against any liability or damages that TSG may incur arising from my negligence during my visit to the Site.
3. I acknowledge that it is my sole responsibility to evaluate carefully the risks inherent in visiting the Site and that I have fully considered those risks, including, without limitation, dangers posed by willful or negligent conduct of myself and/or by others.
4. I acknowledge and voluntarily assume full responsibility for, and full risk of, property damage or loss, or bodily, mental, or personal injury, including death, relating to my visit to the Site.
5. I acknowledge that I am not an employee of TSG or any of its agents during my visit to the Site.
6. I agree that I shall use due care upon entry onto the Site, not undertake any act that may result in injury, not interfere with any activities at the Site, or touch or handle any materials found at the Site.
7. I agree that the following precautions must be observed at all times during the site visit:
  - a. Hard hats, safety vests, safety glasses and appropriate flat soled footwear must be worn;
  - b. All warning signs and barricades must be obeyed;
  - c. Do not stray from approved path for ingress and egress;
  - d. Do not enter areas with inadequate lighting;
  - e. Be aware of and stay clear of any overhead hazards;
  - f. Smoking is prohibited;



- g. Do not touch or walk on wires, piping, ductwork, conduit or other construction materials of any kind;
- h. Climbing on ladders or scaffold is prohibited
- i. Do not lean on or reach beyond any handrails or barricades
- j. Be aware that walking surfaces may be uneven or have other impediments and that extreme care should be taken with each step.

- 8. I agree that if any portion of this document is held invalid, the remaining provisions shall be binding and continue in full force and effect.
- 9. I acknowledge that the Site visit and its activities have been explained to me, and all of my questions answered to my complete satisfaction.

**I have read the Visitor Release Form and Waiver of Liability carefully, understand its significance, and voluntarily agree to all of its terms.**

**THIS IS A RELEASE OF LEGAL RIGHTS. READ CAREFULLY BEFORE SIGNING**

Visitor (print name): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**NOTE:** All required signatures must be completed and this Form returned before the Visitor may visit the Site.